

THE STATE  
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STEPHEN F. HAYES • THOMAS JOSCELYN

the weekly

# Standard

JUNE 10, 2013 • \$4.95

## OBAMA'S ASTEROID

P.J. O'Rourke  
ON THE FATE OF THE SPACE PROGRAM

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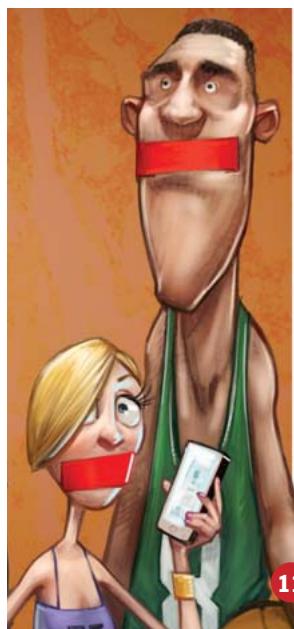
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COVER BY GARY LOCKE

# Eric Holder's Creeping Remorse

THE SCRAPBOOK, despite its reputation in some quarters, has a streak of sentimentality when it comes to certain subjects: *Old Yeller*, for example, or Lou Gehrig's farewell address. And of course, cabinet members on the road to redemption.

Which explains why THE SCRAPBOOK found itself in a flood of tears last week when reading in the *Daily Beast* about Attorney General Eric Holder. General Holder, you see, has been under assault because of the Justice Department's unprecedented campaign of intimidation and abuse against the media (notably the Associated Press and Fox News reporter James Rosen), secretly obtaining phone records, reading emails, issuing subpoenas, letting the FBI threaten criminal prosecution for practicing journalism.

Under such circumstances, the customary practice of the Obama administration has been to deny all wrongdoing, to explain that nobody knew anything until they read about it in the newspaper, and of course, to impugn the motives of those who would criticize the Obama administration. These lines of reasoning and defensive tactics have been on almost daily display at White House press briefings—and repeated in certain carefully selected media outlets. Eric Holder, for his part, has been no exception.

Until now, that is. For according to Daniel Klaidman of the *Daily Beast*, Holder seems to have had a

kind of epiphany over his Wheaties the other morning:

[T]he gravity of the situation didn't fully sink in until Monday morning when he read the [Washington] Post's front-page story, sitting at his kitchen table. . . . [T]he story detailed how agents had tracked Rosen's movements in and out of the State Department, perused his private emails, and traced the timing of his calls to the State Department security adviser suspected of leaking to him. Then the story, quoting the stark, clinical language of the affidavit, described Rosen as "at the very least . . . an aider, abettor and/or co-conspirator" in the crime. Holder knew that Justice would be besieged by the twin leak probes; but, according to aides, he was also beginning to feel a creeping sense of personal remorse.

Now, if readers are feeling slightly cynical at this moment—wondering, for example, if Holder really learned all this from a *Post* story one full day after the subpoena itself was released—THE SCRAPBOOK is having none of it. For Klaidman goes on to describe the attorney general's anguish in some detail and, best of all, to explain how Holder and his trusted associates are working tirelessly to put things right:

Holder knew he had to be proactive in stemming the criticism and restoring the department's credibility with the press. He and his advisers began exploring ways to reform the Justice Department's internal guidelines for investigating leaks to safeguard the

media against overly intrusive tactics. . . . As one of Holder's advisers put it, the message was: "Look, we get it. We understand why this is so controversial, and we're ready to make changes to find the right balance."

As we have said, THE SCRAPBOOK is as skeptical as anyone in Washington when it comes to dissembling by public officials caught in scandal. But is it possible that Eric Holder represents something different? Sure, there is considerable evidence that the Obama administration will do whatever is necessary to protect itself when public servants are murdered (Benghazi) or agencies of government are used to punish political adversaries (IRS). But THE SCRAPBOOK has the word of Daniel Klaidman and the *Daily Beast* that Eric Holder didn't really mean to do anything wrong and, now that he's had his moment on the road to Damascus, is determined to "get it."

But imagine, along with THE SCRAPBOOK, if the *Daily Beast* had been with us in, say, 1927 when one of Holder's predecessors, Harry Daugherty, was caught in a criminal act. Or in 1973, when yet another attorney general, John Mitchell, was accused of obstruction of justice. We would have been informed that these were good guys who had made a regrettable error in judgment, but were anxious to undo any damage they had done. And everybody, in the aftermath of Teapot Dome and Watergate, would have lived happily ever after! ♦

## Fair-weather Fans of the First Amendment

Veteran D.C. journalist Jonathan Alter is releasing his second book on the Obama administration this week—*The Center Holds: Obama and His Enemies*. THE SCRAPBOOK will be as content to ignore this publishing

event as we were Alter's 2010 volume, *The Promise: President Obama, Year One*. You don't have to read far past the cover to know you're getting the independent thinking of a court stenographer. However, it is mildly diverting that Alter told *New York Times* columnist Maureen Dowd last week that he's "on fire" over the Obama

administration's decision to assert in a court filing that a Fox News reporter was a criminal "co-conspirator" with a government leaker and to otherwise spy on the press.

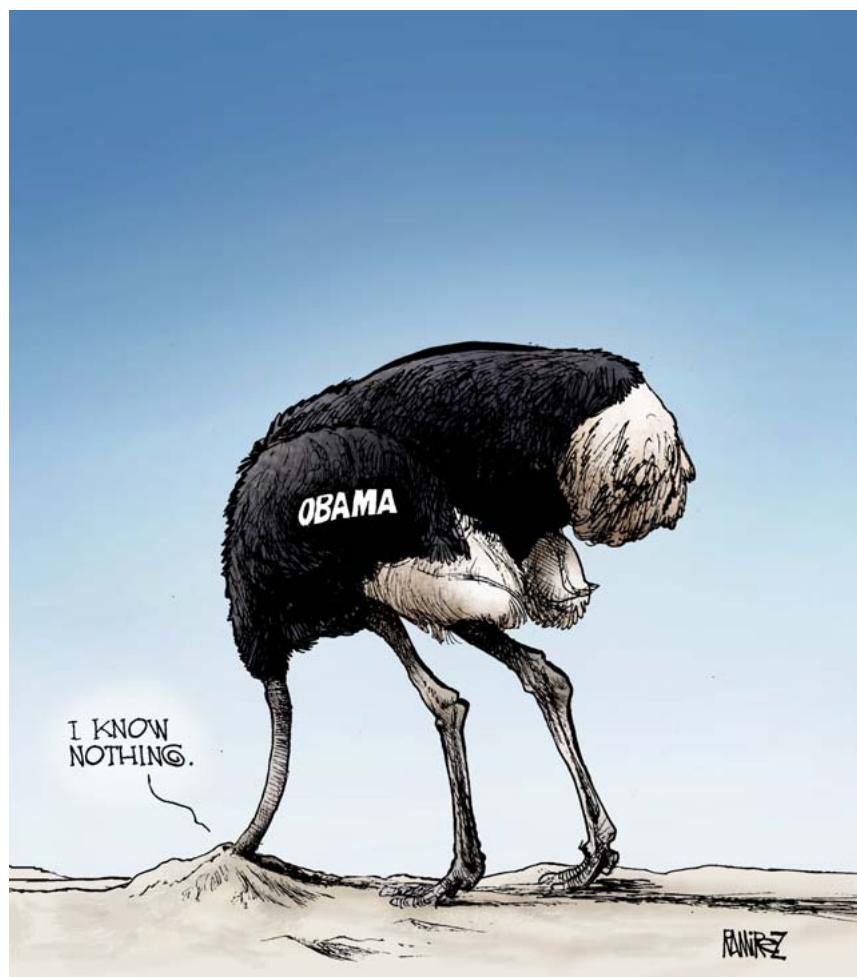
We're pleased that the likes of Alter and Dowd have woken up to the fact that the Obama administration likes to throw its weight around, and we

don't doubt their sincerity in standing up for a free press. However, it's an indictment of the Obamaphile media that they have only now realized the extent of the problem. Indeed, Beltway media and political elites have been squirmingly on speech issues for years now.

Case in point: Sen. Dick Durbin (D-Ill.) recently raised eyebrows when he said he supported a media shield law to protect journalists from government intrusion—an idea pushed by newspaper publishers, TV networks, and the rest of the mainstream media—but he wasn't sure whether bloggers would qualify. In other words, Durbin's all for free speech—provided the government gets to hand out reporting licenses. Durbin previously tried to amend a proposed media shield law—the “Free Flow of Information Act of 2009”—so it provided no protections to bloggers and other citizen journalists. The bill didn't pass, but nary a concern was raised in establishment media circles when Durbin's amendment stood a chance of becoming the law of the land.

Similarly, when a reporter was thrown in jail during the Valerie Plame witch hunt, this was treated by the media as an unfortunate necessity rather than an outrage—because they hoped it would lead to malefactors in the Bush administration. Recall that the big crime at stake in revealing covert CIA agent Plame's identity was violating the Intelligence Identities Protection Act—a 1982 law opposed at the time by the *New York Times* (“a prosecutor could use the bill against reporters and news organizations for exposing crimes and abuses”). But once the Plame incident became an opportunity to inflict political damage on the Bush administration, worries that the government was empowered to incarcerate journalists for doing their jobs fell by the wayside.

More broadly, it should be clear that the federal government increasingly views First Amendment protections—and not just those pertaining to the media—as roadblocks it can steamroll right over. Besides freedom of the press, for instance, the First Amend-



LAME ~~DICK~~  
Ostrich

ment guarantees the free exercise of religion. The mainstream media were all in favor of that back when the issue du jour was the ingestion of hallucinogenic cactus buttons by Native Americans. More recently, they've been inclined to cheer for the other side, as the Obama administration targets Christian organizations bound by conscience and religious conviction to resist the contraceptive and abortifacient mandates in Obamacare. And elsewhere in this issue, Charlotte Allen details how the Justice Department took a break from sorting through reporters' emails to send a letter telling the University of Montana—and by extension every other institution of higher learning—that they must adopt restrictive speech

codes to root out sexual harassment.

In a world where liberals actually cared about the First Amendment, this kind of thing would be front-page news. Instead, the media routinely fail to stand up for the First Amendment except when compelled by self-interest. ♦

## Does the Road to Hell Have Red Light Cameras?

Longtime *WEEKLY STANDARD* contributor Steven Hayward, in an item at the *Powerline* blog, draws our attention to a report by the Federal

Highway Administration and National Highway Traffic Safety Administration on “Red Light Camera Operational Systems.” As is typical with government reports, the soporific wording of the title seems designed to deter anyone from finding the fascinating information inside. The report looked at red light cameras around the country—justified in the name of safety—and found that they are actually hazardous to drivers. *Red Alert Politics* summarized the findings:

The presence of red light cameras at traffic intersections increased the likelihood of rear-end crashes by 14.9 percent and the number of injuries in traffic intersections by 24 percent. Red light cameras also do little to prevent “T-bone” accidents, where the side of one vehicle is impacted by the front or rear of another vehicle, as those accidents often occur when the driver is not paying attention, and not simply disregarding a red light.

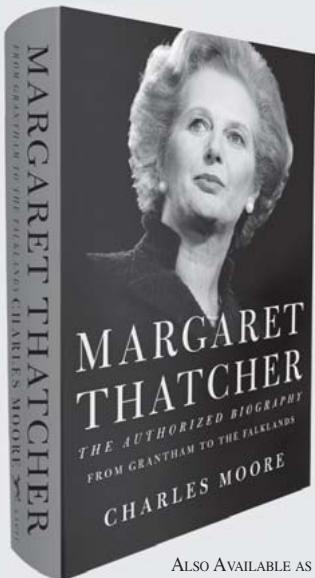
Though critics of red light cam-

eras have long pointed to evidence suggesting red light cameras have this effect, the fact that the federal government has signed on should cause a reexamination of municipal priorities. Will city and local authorities who have become drunk on the revenues generated by these ticketing machines sober up and see the light?

Given the hundreds of millions of dollars these infernal devices take in across the country, THE SCRAPBOOK doesn’t expect to see fewer red light cameras anytime soon. Hayward notes that the report on the hazards of red light cameras is yet another example of how government action is blind to the “law of unintended consequences.” Hayward, as per usual, is correct insofar as you believe public officials were sincere in their safety rhetoric. If, however, you suspect as we do that the purpose was always to raise revenue—then they are functioning precisely as they were intended to. ♦

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The Weekly Standard (ISSN 1083-3013), a division of Clarity Media Group, is published weekly (except the first week in January, third week in April, second week in July, and fourth week in August) at 1150 17th St., NW, Suite 505, Washington D.C. 20036. Periodicals postage paid at Washington, DC, and additional mailing offices. Postmaster: Send address changes to The Weekly Standard, P.O. Box 421203, Palm Coast, FL 32142-1203. For subscription customer service in the United States, call 1-800-274-7293. For new subscription orders, please call 1-800-283-2014. Subscribers: Please send new subscription orders and changes of address to The Weekly Standard, P.O. Box 421203, Palm Coast, FL 32142-1203. Please include your latest magazine mailing label. Allow 3 to 5 weeks for arrival of first copy and address changes. Canadian/foreign orders require additional postage and must be paid in full prior to commencement of service. Canadian/foreign subscribers may call 1-866-597-4378 for subscription inquiries. American Express, Visa/MasterCard payments accepted. Cover price, \$4.95. Back issues, \$4.95 (includes postage and handling). Send letters to the editor to The Weekly Standard, 1150 17th Street, N.W., Suite 505, Washington, DC 20036-4617. For a copy of The Weekly Standard Privacy Policy, visit [www.weeklystandard.com](http://www.weeklystandard.com) or write to Customer Service, The Weekly Standard, 1150 17th St., NW, Suite 505, Washington, D.C. 20036. Copyright 2012, Clarity Media Group. All rights reserved. No material in The Weekly Standard may be reprinted without permission of the copyright owner. The Weekly Standard is a registered trademark of Clarity Media Group.



# No Pain, No Gain

**A**n older Ukrainian guy walks his dogs in the woods near my house. We talk a lot. The other day I was complaining about tendonitis in my ankle, which was causing me pain.

"Pain?" he said. "You call tendonitis 'pain'?"

"What would you call it?" I said.

"Better to say . . . 'discomfort.'"

However rich the English language, Americans make distinctions only of kind, never of degree. "Misfortune," "disaster," "catastrophe"—these words all mean the same thing to us. Any of them might be used to describe (a) dropping your toast on the buttered side or (b) the Bataan Death March.

But my friend's point was not that I was misusing adjectives. His point was that I was a whining sissy. I thought he was about to start lecturing me on the 22 million Soviet war dead. There is nothing more withering than the contempt of those who survived the Brezhnev era in the East Bloc for those who did not. And there rushed back into memory someone I had not thought of since the Cold War.

One night, further into my twenties than I'd care to admit, a friend and I wound up being driven by a volatile Russian and his girlfriend from a party in Harvard Square to one in a thoroughly terrifying neighborhood of inner-city Boston. Ivan and I had met two hours before, and had been guzzling alcohol and declaiming poetry ever since. We had hit it off, in our own slurry way.

It was about 2 A.M. Ivan asked how we liked the car. Good, we told him. He was glad. It wasn't his. In fact, he had no idea to whom it belonged. It had come into the possession of a

criminal friend who said he could use it for a few days. Ivan warned us that he might need to fight a couple of the people at the party we were going to. Unlike most of my friends who quoted poetry, Ivan was about six-foot-five. He had spent his teen years in one of the most violent parts of metropolitan New York—a place white people never went. He liked it



there, he said. His neighbors really knew how to fight.

Ivan had a job as a night watchman. His walk home from Allston took him through the Harvard Business School campus. He would cut through the library if it was open late. "Last week," he told me, "there is nobody there, so what do I do?" He looked at me expectantly.

"You didn't steal a book, did you?"

"No, no!" He sounded insulted. "I squat down and take beeg sheet! Right in middle of Baker Library!"

After reflecting that it was quite a reversal of the natural order when regular citizens have brainstorms and Harvard has to clean up after them, I asked the obvious question. "Why the hell did you do that?"

He gave me a solemn look. "It

was to say . . . 'The Boy from Magnitogorsk! He is here! In America!'"

One night Ivan had, not to be overly tautological, a drinking party in his Somerville apartment. After midnight, he summoned those who had not passed out or been rushed to the hospital and said he was driving to New Mexico. Who was in? At that point in the evening it seemed like a good idea to several of us. He called his parents in New York and told them to expect four people for breakfast.

I woke as we parked in front of their housing project. Ivan walked to the trunk to change into a clean shirt. The bag in which he'd packed it lay amid various rifles and pistols. We went upstairs for a breakfast of bread, radishes, and vodka. His father, who had one of those Leninist names like Traktor, had been a brave dissident in Magnitogorsk. He doted on Ivan. He wanted to make sure we were drunk enough to drive across the country.

That afternoon as the booze wore off, the memory of an approaching deadline descended on me, along with a headache. I had them drop me at the airport in Roanoke, and left Ivan and his two friends to make their heavily armed way across the country. "I was not realizing you were this kind of wimp," said the Boy from Magnitogorsk.

I tell you this without smugness. I have no sense, even today, that I was more responsible than Ivan. People like him collect the fruits of modernity in the form of intensity, rather than longevity or comfort. It's not wrong to call them braver, or us wimpier. I have not given my friend's real name, nor is Magnitogorsk really his native city. This is partly so no one's privacy gets violated, and partly so Ivan does not reappear in my life and teach me the meaning of pain.

CHRISTOPHER CALDWELL

# A Low Dishonest Administration

We'll take the liberty of updating, for the summer of 2013, the famous lines from Auden's "September 1, 1939":

*We sit in our office  
On Seventeenth Street  
Depressed but with anticipation  
As the clever hopes expire  
Of a low dishonest administration.*

It is depressing. We the people reelected Barack Obama. We're stuck with him for three and a half more years. That's three and a half more years of dissembling about his administration's scandals, blocking the repeal of Obamacare, and pursuing a foreign policy of weakness and retreat. That's not just depressing. It's dangerous.

But it's also an opportunity. House Republicans should be able to pursue their oversight responsibilities in a way that serves the public interest in checking a wayward executive while also (at least implicitly) making the case against a sprawling and unaccountable big government. The evident exhaustion of liberalism's policy agenda should allow conservatives to spend less time playing defense and go on offense in a host of areas. The existence of impressive governors and imaginative younger members of Congress offers the possibility for fresh thinking on several fronts. The likely electoral weakness of the Democratic party in 2014 increases the likelihood of strong and unconventional Republican candidates throwing their hats in the electoral ring.

The early signs for 2016 are encouraging too. For one thing, the White House usually turns over after eight years (as it usually does not after four). The only modern exception to the eight-year rotation was George H.W. Bush's victory in 1988—and if the country were to be in as good shape in 2016 as it was in 1988, after eight years of Ronald Reagan, the incumbent party would have a decent chance to win yet another presidential term. But that seems unlikely.

And the presumed Democratic nominee, Hillary Clinton,

isn't likely to be a strong candidate. She wasn't in 2008. She has no accomplishments of note to point to from either her eight years in the Senate or four years as secretary of state. In any case, a close association with the Obama administration's foreign policy is unlikely to be a recommendation for the Oval Office in 2016. Republicans will field (presumably) a younger candidate—and the younger nominee has won the popular vote in every post-Cold War presidential election.

Furthermore, as Nate Cohn recently pointed out in the *New Republic*, it's not just that Clinton is unlikely to maintain her current high popularity ratings once she descends again into the maelstrom of electoral politics. Even now, after all the fawning press coverage of her tenure at State,

national polls show her at only around 51 or 52 percent against Republicans with much lower name identification, "while state polls typically show Clinton near Obama's share of the vote. . . . In the critical battleground states of the Midwest and West, Clinton actually appears to be doing worse than Obama. Not only do recent surveys show her below 50 percent in Colorado and Iowa, but she leads candidates like Rand Paul by

just 4 points in Iowa and 3 points in Colorado—worse than Obama's 5-plus point victories in those states." If all Clinton can do now in polls, at her high-water mark, is replicate Obama's 2012 showing, Republicans can look ahead to 2016 with hope, even some degree of confidence.

The conservative future could and should be bright. But as Hillary Clinton herself is fond of saying, coulda, shoulda, woulda. Conservatives and Republicans have a good chance to be masters of their own fate. So if in 2017 there isn't a new president moving aggressively to implement a reform conservative governing agenda, then we will have to say, switching from Auden to Shakespeare,

*The fault, dear Brutus, is not in our stars,  
But in ourselves, that we are underlings.*

—William Kristol

# Justice for Hezbollah

The Obama administration is heralding a conference later this month in Geneva where representatives of Bashar al-Assad's regime will ostensibly sit down with the Syrian rebel forces opposing them. The effect will be to prop up Assad. Sen. John McCain, on the other hand, is committed to the Syrian people. We commend him for the courage he showed last week when he became the most senior American official to visit Syria since the shooting started, entering from the Turkish border. Meeting with rebel leaders, McCain could hardly have been surprised to learn that the last thing they want is an intra-Syrian peace process with the ruling clique that slaughtered peaceful demonstrators for a year before the opposition finally picked up arms in its own defense. What the rebels want from the United States, Free Syrian Army general Salim Idriss told McCain, is what they've been requesting for a year—weapons and the grounding of Assad's air force with a no-fly zone. Idriss added one new item to the wish list: Bomb Hezbollah.

This request comes as the Lebanese militia has fully entered the Syrian civil war on the side of Assad—fighting not just to keep its ally in Damascus in power, but also to be of service to the Iranian regime, the patron of both Assad and Hezbollah, and to keep open the conduit that allows Iran to ship armaments through Syria to Hezbollah's strongholds in Lebanon.

Last week, Hezbollah sent elite forces against Syrian rebel positions, notably in Qusayr, a strategically vital town. Should Assad lose Damascus, he would fall back to the redoubt of his Alawite people, the coastal mountains along the Mediterranean. Holding Qusayr is critical to preserving a land link from that area to Hezbollah-controlled regions of Lebanon. The importance of Qusayr to Assad and Hezbollah can be gauged by the losses the Lebanese fighters incurred there: dozens killed in an ambush during the group's initial assault, and perhaps 100 dead after a week's combat. Reports suggest that Hezbollah may be on the verge of retaking the town from the rebels, but it's come at considerable cost and thanks in no small part to the Syrian regime's air and artillery support. As it turns out, Hezbollah is not as formidable as advertised.

Nonetheless, in light of Idriss's plea, it's worth remembering that Hezbollah's prestige is built partly on the fact that early in its history it bloodied the United States, killing

and kidnapping hundreds of Americans during Lebanon's 15-year civil war. April was the 30th anniversary of Hezbollah's bombing of the U.S. embassy in Beirut, where 63 were killed, including 17 Americans. October will mark the 30th anniversary of the bombing of the Marine barracks, in which a Hezbollah suicide bomber killed 241 American Marines, soldiers, and sailors. In the aftermath, the Reagan administration withdrew forces from Lebanon and handed Hezbollah a significant victory, one that would not only embolden its patron Iran but also lend credence to Osama bin Laden's claim that America was a paper tiger in retreat.

Since 1983, Hezbollah has plotted other operations against Americans and waged terror campaigns against our allies in Europe, Asia, Africa, and the Middle East, especially Israel, whose citizens have been targeted by Hezbollah



*Funeral for a Hezbollah fighter, killed in Syria*

suicide bombers, kidnappers, snipers, rockets, and missiles. With all the American blood that Hezbollah has on its hands, in addition to the attacks on our allies and interests, the United States has an open account with Hezbollah 30 years past due. Here our interests are aligned perfectly with those of the Syrian rebels.

Nonetheless, American policymakers past and present as well as regional experts are likely to roll their sophisticated eyes at Idriss's suggestion. And yet it is American Middle East hands who should be embarrassed for not having the good sense to see the issue as plainly as the Syrian rebel commander. For four decades U.S. officials refused to stand up to Hezbollah and chose to look the other way when the terrorist group targeted Americans. Is it any wonder that the murderers of Ambassador Chris Stevens are still at liberty nine months after the Benghazi attack, when the United States failed to take action against the assassins of Navy diver Robert Stethem, whose body was tossed onto the tarmac at the Beirut airport in 1985? American policymakers knew it was Hezbollah, and they knew how to make the party bleed by striking any number of targets in Beirut and the Bekaa Valley. And yet they did nothing.

It was because American officials did not want to challenge Hezbollah that they welcomed the analysis of Middle East experts who told them Hezbollah was nothing to worry about anyway. By integrating itself into Lebanon's political system, said the experts, Hezbollah ceased to be a terrorist organization. Sure, up until 2000 it fought Israel in southern Lebanon, but that was as a resistance movement determined to compel the occupying force to withdraw. Yes, Hezbollah was affiliated with the Islamic Republic of Iran, but that doesn't mean it does Iran's bidding, assured the regional analysts. It has its own constituency in the Shia community, to whom it delivers social services, while respecting Lebanon's delicate sectarian balance.

The past decade has shown how ludicrous this "Lebanonization" thesis always was. Hezbollah never stopped its terrorist attacks. As recently as last July it blew up a bus of Israeli tourists in Bulgaria. Closer to home, it targeted its domestic rivals in spectacular operations, like the car bombing that killed former prime minister Rafik Hariri and 21 others on a Beirut street in 2005. In 2006, Hezbollah dragged the country into a war with Israel, incurring billions of dollars worth of damage. And in the fight for Qusayr, Hezbollah has shown that its supposed mission of "resistance" to Israel is just a politically convenient pose; it is in fact an armed wing of the Iranian

regime and now ships its fighters off to Syria to kill Sunni Arabs at the behest of its masters in Tehran.

The State Department has condemned Hezbollah's role in Syria's war "in the strongest terms"—as if that matters. In fact, the administration should welcome Hezbollah's deployment of forces as an opportunity to break its back. Hezbollah is unlikely to continue to absorb as many casualties as it did in Qusayr last week. But neither will it be able to recruit and replenish its fighting forces as readily as it did after its losses in the 2006 war with Israel. It's estimated that Hezbollah lost as many as 600 fighters seven years ago, and many of their inexperienced replacements are among the fallen in Qusayr.

In defending Assad in Syria, Hezbollah has become vulnerable on its home front in Lebanon. There the party prepares for another round of hostilities with Israel and, perhaps more important, watches its back as other Lebanese communities sharpen their knives in anticipation of Hezbollah's stumbling. With the group's resources already stretched thin, the Obama administration should see this as an opportunity. A president who prides himself on personally picking drone targets and killing Osama bin Laden should have no problem settling an account long overdue. It's time to rain some justice on Hezbollah.

—Lee Smith

## Transparency Is No Virtue When Used for Intimidation

By Thomas J. Donohue

President and CEO  
U.S. Chamber of Commerce

The revelation that the IRS unfairly targeted some groups because of their political beliefs has brought the importance of free speech rights into sharp focus. Sadly, the American business community has also had to fend off efforts to silence our voice through fear, intimidation, and overregulation. Labor unions, shareholder activists, and anti-business policymakers have long sought to stifle the voice of business in the political process and the public debate.

The Securities and Exchange Commission has been asked by these groups to make a rule that would compel public companies to disclose their spending on independent political speech. These same anti-business groups continue to push the Federal Election Commission for a rule to burden organizations that engage in independent political speech by forcing them to publicly reveal their donors.

In 2010, some in Congress tried to sway the midterm elections in their favor through the DISCLOSE Act, legislation that would have chilled political participation by the business community—but not by labor unions. The bill was defeated. But business opponents still want to see its principles enacted, and some lawmakers are working to revive the legislation.

Proponents of such efforts claim that they are simply fighting for transparency. Don't be fooled. What they really want is to silence viewpoints they don't like in order to have a one-sided conversation with the American people in the public square. They aim to do this by regulating speech they don't like and intimidating and harassing speakers they don't agree with.

For instance, the anti-business organization Media Matters has pledged to use disclosed political information to target companies and "provoke backlashes among ... shareholders, employees, customers, and the public." They have promised to coordinate with their allies

and misconstrue businesses' political activities and endorsements. And that's just one example of one organization.

Calls for disclosure of political speech under the guise of transparency will continue—but transparency is no virtue when it becomes a tool to punish free speech.

Businesses and the organizations representing them have a right to make their views known and their voices heard. Our opponents are free to disagree. They are welcome to take us on in the public arena through the exchange of ideas. But whether it happens in the shadows of bureaucracy, as with the IRS scandal, or in the light of day through legislation and rulemaking, there should be no room in government or civil society for those who seek to trample on the constitutionally guaranteed rights that we all cherish and should respect.

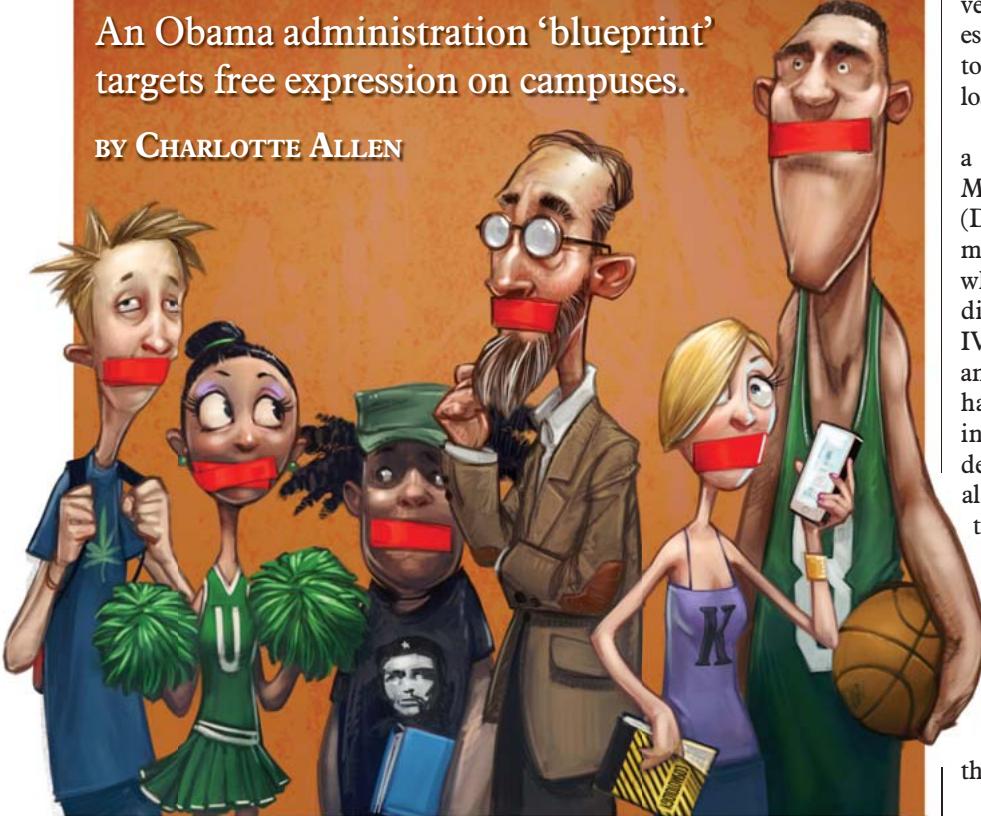


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# The Big Chill

An Obama administration ‘blueprint’ targets free expression on campuses.

BY CHARLOTTE ALLEN



**I**t's a well-known fact that on most college campuses, supposedly havens of academic freedom, you really have to watch what you say.

The vast majority of America's universities, both public and private, have speech codes that regulate the utterances of their students, professors, and administrators. Some of those codes at private universities spring from the religious or ethical missions of the institution, and it's understandable that those campuses might want to forbid, say, swearing or pornography or insulting the institution's faith tradition. But most campuses are avowedly secular, and what the speech codes enforce is political correctness. That means curtailing expressions deemed "offensive" (a word that appears in many a speech code) to the easily aroused sensibilities

of a range of fashionable victim groups, especially militant feminists, for whom, say, fraternity pledges carrying posters reading "WE LOVE YALE SLUTS" outside the Yale Women's Center constitutes "sexual harassment" (this actually happened in 2008). Some of the codes are laughably extreme. At California State University, Chico, for example, the definition of sexual harassment can include "reinforcement of sexist stereotypes through subtle, often unintentional means" and "continual use of generic masculine terms ... to refer to people of both sexes."

In recent years, thanks to ridicule and lawsuits challenging the constitutionality of the codes, the free-speech watchdog Foundation for Individual Rights in Education (FIRE) has tracked a slight but encouraging trend among colleges toward getting rid of them. That is, until this May 9, when the Obama administration's Justice and Education Departments jointly issued

a directive that essentially makes speech codes mandatory on all college campuses that accept federal funding. That means all U.S. colleges and universities except for a tiny handful that eschew federal grant money and refuse to participate in the federal student-loan program.

The directive came in the form of a 31-page letter to the University of Montana from the Justice Department (DOJ) and the Education Department's Office for Civil Rights (OCR), which have authority to enforce anti-discrimination provisions in Title IV and Title IX of federal civil-rights and education laws. DOJ and OCR had conducted sexual-harassment investigations after two female students reported having been sexually assaulted by football players on the university's Missoula campus in 2011. During the course of the investigation nearly three dozen other complaints about sexual assaults and harassment surfaced, and the DOJ and the OCR took the position that the University of Montana's procedures for handling those complaints were inadequate.

The May 9 letter reflected the terms of a settlement with the two federal agencies to which the university had agreed. But the letter also declared that those settlement terms were to be "a blueprint for colleges and universities throughout the country." And the core language of that "blueprint" consisted of a brand-new and sweepingly broad definition of sexual harassment as any "unwelcome conduct of a sexual nature," including "verbal ... conduct of a sexual nature." The letter contained no thresholds, limits, or standards for construing what "unwelcome" might mean. "Unwelcome" to whom? The chair of the women's studies department? A charter member of the Society for Cutting Up Men? Does telling an off-color joke count if someone gets offended?

Furthermore, the DOJ/OCR letter makes it mandatory for the University of Montana—and by extension nearly all universities—to nip sexual harassment in the bud by conducting their own Title IX investigations of

*Charlotte Allen, a frequent contributor to THE WEEKLY STANDARD, last wrote on the White Privilege Conference.*

any dubious conduct they hear about “regardless of whether a student has complained, asked the university to take action, or identified the harassment as a form of discrimination.” *Miami Herald* columnist Glenn Garvin joked that a professor could get into trouble for assigning the bawdier bits of Shakespeare.

The new DOJ/OCR definition of campus sexual harassment seems to fly in the face of previous court and administrative interpretations of both sex-discrimination law and the Constitution. Courts have traditionally regarded sexual harassment as grounds for finding an employer or educational institution in violation of prohibitions against sex discrimination, specifically forbidden by Title IX and a range of federal employment laws. But the courts have also interpreted sexual harassment fairly precisely: as either demanding a quid pro quo (sexual favors in return for a good grade) or maintaining a “hostile environment” (permitting sexual assaults, innuendos, or an otherwise sexually unpleasant atmosphere).

In a 1999 decision, *Davis v. Monroe County Board of Education*, the Supreme Court, following the lead of its earlier decisions on employment law, ruled that for a hostile environment to exist, the harassment of a student must be “so severe, pervasive, and objectively offensive that it can be said to deprive the victim of access to the educational opportunities or benefits provided by the school.” The implication was that an occasional sexual taunt by a fellow student or a stray dirty joke told on campus wouldn’t be enough to hold an institution liable for sex discrimination. In addition, the Supreme Court’s requirement that the words or conduct in question be “objectively offensive” eliminated the possibility that an educational institution could be liable for sex discrimination on the basis of a student’s feeling offended over a classmate’s bringing a copy of the *Sports Illustrated* swimsuit issue to campus.

Furthermore, the First Amendment’s free-speech guarantees come into play once an educational institution stands in danger of being penalized for permitting expression that would be

clearly permissible in a noncampus setting. Public colleges and universities, like other government entities, must afford full First Amendment protection to those on their grounds, and constitutional challenges to absurd speech codes at public universities have been extremely successful.

In 2008, for example, a federal appeals court struck down a sexual-harassment policy at the public Temple University in Philadelphia that banned “expressive, visual or physical conduct of a sexual or gender-motivated nature” after a former graduate student in history sued the university, alleging that the policy prevented him from expressing his views on women in the military in class. Private colleges enjoy no First Amendment protection per se and are free to adopt the speech codes of their choice, although some, such as Yale, have internal policies that at least in theory protect students’ freedom of expression. Still, the Constitution forbids the *government* from mandating infringements of students’ or professors’ free-speech rights at both private and public institutions.

It was with the First Amendment in mind that in 2003 the George W. Bush-era OCR issued a “Dear Colleague” letter addressed to university presidents reminding them that “the statutes that [the OCR] enforces are intended to protect students from invidious discrimination, not to regulate the content of speech.” The letter by then-OCR chief Gerald A. Reynolds reiterated the standards that the Supreme Court had set forth in the *Davis* ruling and added this clarification: “OCR’s standards require that the conduct be evaluated from the perspective of a reasonable person in the alleged victim’s position, considering all the circumstances, including the alleged victim’s age.” Reynolds borrowed the “reasonable” language from a 1993 Supreme Court decision defining sexual harassment in a workplace context.

The DOJ/OCR letter seemed to have made mincemeat out of the educational harassment standards that had been carefully crafted by the Supreme Court and interpreted by the Bush administration. For one thing, the letter

smashed together the tines of the two-pronged test that the Supreme Court had created in the *Davis* ruling: that the alleged victim must not only feel subjectively harmed or threatened but that the speech or conduct in question must also be objectively harmful under the “reasonable person” standard. Instead the letter said that “the United States considers a variety of factors, from both a subjective and objective perspective, to determine if a hostile environment has been created.”

“The letter widens the universe of things to be considered,” said FIRE’s president, Greg Lukianoff, in a telephone interview. (Lukianoff is the author of a 2012 book, *Unlearning Liberty: Campus Censorship and the End of American Debate*.) “Now, there’s a balancing test,” Lukianoff said. “You’re effectively getting rid of the ‘objectively offensive’ requirement that’s supposed to be met separately from the requirement that a victim feels subjectively harmed.”

Worse still, according to Eugene Volokh, a professor of First Amendment law at UCLA, the DOJ/OCR letter unmoored the legal concept of “sexual harassment” from the legal concept of a “hostile environment” with its objective and subjective components that the Supreme Court said were necessary to prove a sexual-harassment case in court. Now, effectively, said Volokh, it won’t matter for federal enforcement purposes whether the offensive speech or conduct on a college campus ever gets to the point that it’s “severe” or “pervasive” or “objectively offensive” by “reasonable person” standards. “The OCR says that sexual harassment need not be limited to creating a hostile environment,” said Volokh in a phone interview. “It’s saying that sexual harassment is any unwelcome conduct of a sexual nature. And it’s telling universities that you need to punish that conduct: We expect you to set up a speech code.”

The penalty for a college that fails to follow OCR rules is severe: the loss of all federal educational funding. It is not surprising, then, that the University of Montana scrambled to comply with whatever the two federal agencies

demanded as conditions of settlement, even though it remains unclear whether there was any foundation to the numerous complaints about sexual misconduct that allegedly occurred there. The May 9 letter mandated that the university take such measures as “separating the accused harasser and the complainant” and “taking disciplinary action against the harasser”—all on the basis of, say, a ribald speculation about the sex life of the gender-studies professor. When the OCR flexes its muscles in the sexual-harassment arena, academia capitulates. In April 2011 the OCR ordered all colleges to lower their standards of proof in campus disciplinary proceedings for determining whether sexual misconduct had occurred. Not a single college protested.

Right now, the OCR seems to be vaguely embarrassed about the negative publicity that greeted the May 9 letter (a May 16 op-ed by Lukianoff in the *Wall Street Journal* jeered at the letter’s apparent constitutional deficiencies). On May 22 Education Department spokesman Jim Bradshaw issued a statement insisting that both the letter and the settlement agreement with the University of Montana were “entirely consistent with the First Amendment and did not create any new or broader definition of unlawful sexual harassment under Title IX or Title IV.” He asserted that the OCR remained committed to the hostile-environment standard. But Bradshaw added, “At the same time, it is important that students are not discouraged from reporting harassment because they believe it is not significant enough to constitute a hostile environment.”

In other words: Universities had better set up those speech codes. They’d better start disciplinary proceedings against that professor who assigned *Tropic of Cancer* in his American literature class and incurred the wrath of feminist grad students. An investigation of this sort might go nowhere, “but professors would start watching what they’re saying in their classrooms,” said UCLA’s Volokh. “That’s a classic ‘chilling effect’ on free speech. It’s why I think this is a very dangerous situation.” ♦

EPA/JIM LO SCALZO/LANDOV

# Let the Sunshine In

It’s high time for the administration to release the bin Laden documents. **BY STEPHEN F. HAYES**

In a speech at the National Defense University on May 23, Barack Obama declared an end to the global war on terror. The threat posed by al Qaeda, its affiliates, and those it inspires can be managed, he said. “As we shape our response, we have to

about the diminished threat posed by al Qaeda. And it’s dangerous if he’s incorrect.

There are many reasons to think he’s wrong, and some of the most compelling are being kept from the American public. They come from al Qaeda

itself, in the documents captured during “Neptune Spear,” the operation on May 2, 2011, that resulted in the death of Osama bin Laden. In addition to loading bin Laden’s bullet-ridden body into the waiting helicopter, the Navy SEALs who participated in the raid brought out with them numerous bags full of valuable intelligence from the compound in Abbottabad. The captured data included computer hard drives, thumb drives, data cards, audio and videotapes, and paper files. In a television

interview six days after the raid, the White House’s top national security adviser, Tom Donilon, said the collection could fill a “small college library.”

It’s been two years since that material was captured. To date, the Obama administration has made public just 17 documents. Those documents were released in May 2012, on the first anniversary of the Abbottabad raid—and six months before the presidential election. There has been nothing since, raising concerns among Obama administration critics and defenders alike.

“After two years the public has seen a tiny and insignificant taste of what was in OBL’s hideout,” says Bruce Riedel, a 30-year veteran of the CIA and former top Obama adviser on Afghanistan and Pakistan. “The U.S. government could safely release far more to help



President Obama's victory lap

recognize that the scale of this threat closely resembles the types of attacks we faced before 9/11. . . [I]f dealt with smartly and proportionally, these threats need not rise to the level that we saw on the eve of 9/11.”

The president described an al Qaeda so thoroughly enervated that the threat it poses no longer requires a sustained, global campaign dedicated to its elimination. “Today, the core of al Qaeda in Afghanistan and Pakistan is on a path to defeat,” he said. “Their remaining operatives spend more time thinking about their own safety than plotting against us.”

The shift in policy the president announced is risky even if he’s right

Stephen F. Hayes is a senior writer at THE WEEKLY STANDARD.

the public and experts better judge the threat al Qaeda and its allies still pose. What we have seen is far too little, far too late."

A top former U.S. counter-terrorism official agrees. "This is ridiculous," he says.

Perhaps not surprisingly, the handful of documents released last year painted a picture of al Qaeda consistent with the president's election-year narrative: The top echelon of al Qaeda central was being decimated, and the survivors were demoralized. The group's affiliates were disorganized and consumed by internecine power struggles. Bin Laden himself was near-delusional, a sad old man almost entirely detached from the operations of the group he founded, left to write manifesto-length missives to leaders who may or may not have paid him much attention.

The headline of a *Washington Post* column by David Ignatius, who previewed last year's release, described bin Laden as a "lion in winter." The title of the report from West Point's Combating Terrorism Center that accompanied the documents was "Letters from Abbottabad: Bin Laden Sidelined?" The authors of the West Point study repeatedly made clear that they were offering only a glimpse of al Qaeda and bin Laden based on a small sample of documents selected by the government.

"Such a study is fraught with risks," the report noted,

not least because the academic community is not involved in the process of declassification and is therefore unaware of the larger classified corpus of documents. ... [W]hen an academic center, such as the CTC, is provided declassified documents to study and analyze before releasing them to the public, its researchers have no part in the selection of documents to be declassified and are privy only to declassified documents. ... Analyzing the state of al Qaeda on the basis of the [17 declassified] documents is like commenting on the tailoring of a jacket when only a sleeve is available. Although a sleeve cannot substitute for the remaining parts of the jacket, it can still offer important features about the overall jacket: it can indicate its

color, its textile design, and most likely the quality of its stitches and lining.

Some of the claims made about last year's release were no doubt true. It's clear that al Qaeda central was being chased out of Waziristan by U.S. drones, and there were difficulties among al Qaeda affiliates and would-be allies. But upon further examination, the answer to the question "Was bin Laden sidelined?" appears to be "no."

Current and former U.S. officials briefed on the full cache of documents say that bin Laden played an active role in coordinating attacks and running al Qaeda central, even from the isolation of his compound. They say the documents show the al Qaeda leader as someone who wanted the organization he built to continue to reflect his priorities and objectives and who sought to make clear to those beneath him what those priorities and objectives were. More than 400 "immediate-threat reports" were generated during the initial stage-one exploitation of the Abbottabad documents, according to congressional testimony from Director of National Intelligence James Clapper. Bin Laden also played a key role in maintaining strong relations between al Qaeda central and the Taliban and its leader, Mullah Omar. Obama administration officials had hoped to drive a wedge between al Qaeda and the Taliban so as to include the Taliban in a negotiated peace in Afghanistan. Despite claims that the two organizations had grown apart, the Abbottabad documents suggest a much stronger relationship than that hypothesized by U.S. policymakers.

Another window into bin Laden's role comes from Bruce Riedel, the former Obama adviser. Riedel told the *Hindustan Times* that the documents demonstrate that al Qaeda leaders played a significant role in planning the attacks in Mumbai in 2008 with Hafiz Saeed, the leader of Lashkar-e-Taiba. That attack killed more than 150 people and injured more than 600. "The documents and files found in Abbottabad showed a close connection between bin Laden and Saeed, right up to May 2011." The documents,

Riedel continued, "suggested a much larger direct al Qaeda role in the planning of the Mumbai attacks than many assumed." Riedel told the paper that bin Laden might have seen surveillance reports on the site of the attack made by the Pakistani-American conspirator David Headley.

The bin Laden documents also illuminate the on-again, off-again relationship between al Qaeda and the Iranian regime. The early document release describes a relationship that is "fraught" with tension. Other documents, however, show a somewhat friendlier relationship based on mutual interests and, at times, mutual exploitation. Some show a pragmatic bin Laden laying out the benefits of a partnership of convenience with the mullahs. The documents make clear that senior Iranian officials, including some in high office today, cultivated the relationship with al Qaeda and, despite some difficulties, provided significant help on logistics, training, and transit through Iran.

Sources tell THE WEEKLY STANDARD that the documents also provide additional information about the very close relationship between al Qaeda and Pakistan's intelligence service, the ISI. "It's sometimes hard to tell them apart," says one U.S. official briefed on the documents. The overlap between al Qaeda and the ISI has been known for years, but officials who have been briefed on the documents say that the real story is in these details and makes clear the wisdom of the Obama administration's decision not to give the Pakistani government any advance notice of the bin Laden raid.

Why hasn't the American public seen more of these documents? The answer appears to be a mix of bureaucratic infighting and politics.

When the documents were first brought to the United States, an inter-agency team led by the CIA began their "stage one" exploitation. In this first examination, analysts place a high priority on extracting intelligence relevant to immediate operations. By all accounts the CIA-led team performed exceptionally well in

this initial phase, turning data points into targets and incidental information into kinetic action.

But after the initial push, the exploitation process hit a snag. The CIA team believed its work was largely done, but when other intelligence agencies sought access to the documents in order to complete the stage-two exploitation, the CIA became territorial, reluctant to share what it controlled. After several months of squabbling between the CIA and the Defense Intelligence Agency and CENTCOM, a team of more than two-dozen analysts from the military side finally gained access.

White House officials, working on behalf of a president who has made clear that he wants to pull back from the broad war launched by his predecessor, felt little urgency to expedite the process. The 17 documents released last year, which sources say White House officials had a hand in selecting, helped shape the public narrative about bin Laden and al Qaeda that the administration wanted. John Brennan, former White House counterterrorism director and now head of the CIA, gave a speech at the Wilson Center on April 30, 2012, in which he previewed the initial document release, claiming that al Qaeda was “losing badly” and a “shadow of its former self.”

For a collection of such significance—the inside story of the enemy America has fought for more than a decade—there has been very little public talk about the Abbottabad documents. In April, Representative Devin Nunes, a Republican from California who sits on the House Permanent Select Committee on Intelligence, asked about the documents at a hearing with the leaders of the intelligence community. Director of National Intelligence Clapper spoke about the progress in analyzing the documents and may have hinted at the bureaucratic tug-of-war when he noted that, while the CIA has “executive authority” over the exploitation, the Afghanistan-Pakistan Center of Excellence at CENTCOM had been working through the files in recent months. That team, he said, is proceeding “on a very, very detailed basis . . . almost in an academic

research context to read out the findings . . . that might bear on a threat.”

But members of Congress have had little access to the documents themselves, and most of the briefings about their contents have taken place at the staff level. Sources from both parties on the intelligence oversight committees say that new briefings are being scheduled for the coming weeks and that interested members will have access to many of the documents.

But is that enough? And who will decide what the members see? John Brennan at the CIA? Others eager to pronounce al Qaeda dead?

Analysts and officials on the left and the right who spoke with THE WEEKLY STANDARD believe the vast majority of the documents should be released to the public—and soon. Many are actually

unclassified, and most of those that are classified could be quickly declassified and released. Some of the documents include sensitive information and would have to be redacted before public release, but Americans’ interest in understanding the continuing threat from al Qaeda, particularly in light of the administration’s announced policy shift, is compelling.

“At a minimum,” says Rep. Nunes, “members of the House and Senate Intelligence Committees should have access to the full documents in their entirety as soon as possible. And every document that can be declassified should be made available to the public immediately. Researchers and historians should have an opportunity to study these documents so that we can continue to learn about al Qaeda.” ♦

# How to Explain the Swedish Riots

The standard answers of the left are wrong.

BY PAULINA NEUDING

*Stockholm*  
On May 13, Swedish police shot and killed an elderly man armed with a knife in Husby, a heavily immigrant suburb of Stockholm with high unemployment. After that, riots raged around Stockholm for a week and spread to other parts of the country, seemingly sparked by the killing in Husby. Angry young men threw rocks at police and torched at least 150 cars.

This is not the first time that riots have erupted in Sweden. Only a couple of years ago, firefighters and emergency personnel had to wait for police escorts before they could enter certain areas in the city of Malmö, after being attacked by rock

throwers. In a different part of the same city, the postal service stopped delivering mail after postal workers were attacked.

In the American blogosphere the idea has spread that the Swedish riots are related to Islam. This is not the case (although Sweden has known Islamist violence in the past, for instance the terrorist bombing in Stockholm in 2010). Muslim leaders in the affected areas have denounced the violence and urged calm. The man who was shot in Husby was Portuguese. And the angry young rioters have not appealed to Islam or otherwise indicated that their violence is religiously motivated. Instead, they cite police brutality and social injustice to justify their actions.

This last explanation has been uncritically accepted by the Swedish

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left, which reacts the same way as the American or French left when confronted with urban riots: The violence is condemned, but described as a legitimate expression of frustration over inequality and a lack of public investment. Sometimes it is even romanticized: "A riot is the language of the unheard," wrote Sweden's largest newspaper, the Social Democratic *Aftonbladet*, quoting Martin Luther King Jr. just weeks before he was killed—as if rioting in the midst of the Swedish welfare state of 2013 were comparable to the struggles of African-American descendants of slaves and heirs of segregation during the 1960s.

From an American perspective, the Swedish riots hold at least two lessons. First, they illustrate the weakness of the left's go-to explanation for mob violence—that it is a function of inequality and poverty.

Sweden, after all, is an exemplary country in terms of both social equality and treatment of minorities. But not even in Sweden, apparently, is taxpayers' generosity sufficient to maintain law and order, according to this standard interpretation.

Second, the riots are a reminder of the left's inexhaustible egalitarian ambitions. Not even in a welfare state like Sweden is the left willing to abandon the idea that the solution to violence and destruction lies in ever more social programs and more radical redistribution of wealth. There is always a new, absolutely necessary social reform waiting around the corner.

What is the actual situation in Sweden, then? What are the intolerable social injustices that force young men into the streets?

Racism and discrimination do

exist in Sweden, as they do everywhere. But Swedes are remarkably open to other groups and cultures. The Migrant Integration Policy Index (MIPEX) gives Sweden a perfect score (100 points out of 100) on equal opportunity for immigrants. According to a recent World Values Survey, Sweden is also among the world's least racist countries and most open to immigrants. Unlike the youths in French and English

middle-income earner pays more than half his salary in taxes to fund welfare services such as free higher education, health care at only token cost, and a variety of other social welfare programs. No matter how long they have lived in the country, immigrants who can't speak Swedish have the right to an interpreter (free of charge) when visiting a physician. Immigrants who complete their Swedish language studies (which are, of course, free) are awarded a government bonus of about \$1,000.

Today, 60 percent of those living on welfare in Sweden are immigrants. Incidentally, the same week the riots began, the Swedish parliament voted to allow *illegal* immigrants the right to government-funded health care. In this and other ways, Sweden has shown its minorities a generosity that is probably unparalleled in the world.

In ghettos, Swedish minorities do not come from former colonies—Sweden never had any real colonies. Nor are they the children of guest workers, as in Germany.

Instead, the vast majority of immigrants to Sweden in recent years have been welcomed on purely humanitarian grounds. In only a few decades, Sweden has gone from being an ethnically and culturally homogeneous country to boasting more immigrants per capita arriving every year than the United States or any other Western country. The town of Söder-tälje, for instance, with a population of 83,000, accepted about 7,000 refugees from Iraq during the Iraq war. Its nickname is "Little Baghdad."

And Sweden, unlike the United States, is a society with a large welfare state. This means that high immigration imposes heavy costs. A Swedish



Burned out cars after rioting in the Stockholm suburb of Rinkeby

It's true that in recent years social inequality has increased in Sweden, as in the United States, but Sweden still has one of the lowest poverty rates in the world. According to Eurostat, only 1 percent of the Swedish population lives in material poverty—the second-lowest rate in Europe, where an average of 9 percent live in poverty.

In other words, the Swedish riots pose a real challenge to the standard progressive theory, which tends to explain social problems with reference to a lack of resources, inadequate public investments, and uneven distribution of wealth. If not even egalitarian Sweden is spared riots and violence, and if the progressive theory is the answer, to what lengths must we go in order to persuade unruly youths to channel their grievances through the democratic process? ♦

# The Two Faces of Latin America

Colombia vs. Honduras.

BY MAX BOOT

If you want to see both the potential and the peril in Latin America, you could not do better than to visit Honduras and Colombia, as I did in mid-May: The former is Exhibit A for all that is wrong with the region, from drug trafficking and violence to governmental corruption; the latter a showcase of what can be done to bring even the most embattled country back from the brink.

First, the bad news. Honduras owns a dubious distinction, of the highest murder rate in the world. In 2012, according to the United Nations, it suffered 85.5 homicides per 100,000 residents compared with a global median of 8.8. The rate in the United States is under 5 homicides per 100,000; in Canada it is under 2. Mexico is far more violent but even its homicide rate is less than a third of Honduras's—24 per 100,000. San Pedro Sula, a city in northern Honduras, is ground zero for this epidemic of violence—its murder rate is 169 per 100,000, making it the most violent city on the planet. More than 7,100 people were murdered in the entire country (population 7.7 million) in 2012, and there has been no abatement of that trend this year. Even in the capital, Tegucigalpa, visitors are warned not to walk outside their hotel.

Honduras is the original banana republic—it was home in the early 20th century to banana plantations owned by two giant American corporations, United Fruit Company (now Chiquita)

and Standard Fruit Company (now Dole), which dominated the country's political and economic life. Today it is a cocaine republic, not a major grower of coca but the leading transshipment point for cocaine coming from Venezuela, Bolivia, Peru, and Colombia to the United States.

The State Department estimates that "more than 80 percent of the pri-



Elite troops of the Honduran Army patrol near the capital.

mary flow of the cocaine trafficked to the United States first transited through the Central American corridor in 2012," and "as much as 87 percent of all cocaine smuggling flights departing South America first land in Honduras." Honduras is ideally placed midway between the Andes and North America—single-engine aircraft can make it there from Venezuela without refueling. U.S. officials in Tegucigalpa estimate that 20 to 30 tons of cocaine pass through Honduras every month, mainly along the remote Atlantic coast where roads are few but jungle landing strips for cocaine-carrying aircraft and makeshift ports for cocaine-carrying fast boats proliferate.

Not all of the cocaine moves by air or sea; some of it is transported via the Pan-American Highway into Mexico

and then to the United States. Powerful street gangs have developed in Honduras such as Mara Salvatrucha (MS-13) and the 18th Street gang. Their membership is estimated at more than 36,000, and their tentacles reach into the United States—not least because some of their members are former illegal immigrants who have been arrested and deported to Honduras, where they have few social ties outside the criminal gangs. (Some 32,000 Hondurans a year are deported from the United States—the U.S. Immigration and Customs Enforcement service runs six to eight full flights a week to Honduras.) As in Mexico, turf battles among gangs produce horrendous casualties and considerable collateral damage.

The government in Tegucigalpa seems helpless to stop this onslaught of criminality—not least because so

many officials and their relatives are believed to benefit from the drug trade. Narco-trafficking is one of the few sources of revenue and employment in this desperately poor country whose per capita income, according to the World Bank, is less than \$2,000 a year and where more than 59 percent of the population lives below the poverty line.

It is no coincidence that Honduras is not only the most violent country on earth but also one of the most corrupt, ranking 133 out of 177 in Transparency International's survey of international corruption. That makes it the most corrupt country in Central America, a region not exactly noted for good government (with the possible exception of Costa Rica). The police are particularly suspect. In one notorious case in 2011, Honduran police officers kidnapped and killed the son of a prominent academic. The result is what one U.S. embassy official calls a "culture of impunity" for drug traffickers.

Battling back are the Drug Enforcement Administration and U.S. armed forces, which have made C-TOC (Countering Transnational Organized Crime) their top priority in the region. They have not enjoyed notable success so far. Their most ambitious initiative,

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Operation Anvil, was launched on a trial basis between May and July 2012. It was designed to use U.S. and Colombian intelligence to guide specially vetted Honduran security forces, accompanied by DEA advisers, to interdict narcotics aircraft landing along the Atlantic coast. The State Department employed its own helicopters, flown by Guatemalan pilots, to transport police strike forces, while the U.S. military's Joint Task Force Bravo, based at Soto Cano airbase in Honduras, supported the operation with fuel and logistics.

Anvil did result in the seizure of 2.5 tons of narcotics and seven arrests, but it also created a public relations fiasco when aggressive FAST teams (Foreign-Deployed Advisory and Support Teams), composed of DEA agents redeployed from Afghanistan who were supposed to be acting only as advisers, opened fire and killed suspects. The Honduran air force compounded the woes by using intelligence generated by Colombia and the United States to shoot down two small planes without positively identifying them as drug runners. U.S. and Honduran officials have been planning a follow-on operation—Anvil II—but so far it has not passed beyond the planning phase even as murder and drug trafficking reach new heights.

The situation in Honduras might appear hopeless were it not for the fact that Colombia was arguably just as besieged a decade ago and has since made a miraculous comeback. Since the 1960s Colombia has battled the Marxist rebels of FARC (the Fuerzas Armadas Revolucionarias de Colombia, or Revolutionary Armed Forces of Colombia), in league with narco-traffickers. In addition, the 1980s saw the rise of the powerful Medellin and Cali cartels led by notorious drug barons such as Pablo Escobar. Although the cartels declined in the 1990s, drug production continued to increase and FARC got stronger. By 2000, FARC controlled an area the size of Switzerland and had surrounded Bogotá. It was considered unsafe to drive outside the capital. Kidnapping and bombings were common.

Corruption was rife. The country was in the throes of what the *Washington Post* described as a “comprehensive social and political breakdown.”

Today the situation is very different. Bogotá is a bustling city where the most common dangers are pickpocketing and mugging—not kidnapping and murder. FARC still exists but is no longer an existential threat. Its ranks have been much reduced (from over 20,000 full-time fighters to fewer than 10,000), many of its top leaders have been killed or captured, and it is now engaged in peace talks in Havana with the Colombian government. Between 2000 and 2012, the number of homicides in Colombia fell 43 percent, the number of kidnappings 95 percent, the number of terrorist acts 47 percent, the amount of cocaine generated 72 percent. In no small part because of this improvement in security, the unemployment rate has declined 53 percent while foreign investment has risen 385 percent, tourism 98 percent, and GDP 65 percent. (All figures are from Colombia's Ministry of National Defense except for the fall of cocaine production, which comes from the U.S. embassy in Bogotá.)

Colombia faces continuing challenges—in particular the need to consolidate gains against the FARC by providing governmental services in remote, hard-to-reach parts of the country far from its metropolitan centers. But so significant is the change from 2000 that Colombia has become active in training thousands of foreign police officers in its military schools and sending advisers to countries such as Mexico to help them emulate the Colombian example.

Why did Colombia succeed where Honduras has so far failed? U.S. aid is part of the story—\$8 billion worth over the past decade, providing everything from helicopters to trainers that improved the performance of the Colombian armed forces. But, as Washington has learned in Iraq and Afghanistan, generous foreign spending can all too easily be wasted. The fact that the Colombians have made such good use of the money is due to the inspired leadership provided by Álvaro Uribe, president from 2002 to 2010, and since

then by his former defense minister and successor, Juan Manuel Santos.

Uribe is a charismatic, transformational figure, similar in his impact to Ronald Reagan and Margaret Thatcher. He took on not only the FARC but also right-wing militias and corrupt government officials. He pushed through a war tax and expanded the size and effectiveness of the military, enabling the armed forces to undertake an effective counterinsurgency campaign. Santos is not as flamboyant, but he is more diplomatic—a George H.W. Bush or a John Major. (A better analogy might be to William Howard Taft, since Uribe, like Theodore Roosevelt, still pines for power and has clashed publicly with his former protégé.) Santos has reached out to countries such as Ecuador and Venezuela that Uribe confronted over their support for FARC; Santos's quiet suasion has helped persuade Ecuador, though not yet Venezuela, to stop cooperating with the rebels. Like the elder Bush at the end of the Cold War, he has the opportunity now to use his negotiating skills to secure a victory that his predecessor made possible with bold and aggressive action.

The obvious implication is that Honduras needs Colombian-style leadership. Easier said than done. The previous incumbent, leftist Manuel Zelaya, was ousted in a coup in 2009. The current officeholder, Porfirio “Pepe” Lobo, is more conservative but no more effective. The United States is not going to swap Honduran leaders like an empire of old, but it can still play an effective role in identifying and assisting honest officials (yes, some exist) in the Honduran government. Perhaps someday Honduras will find its own Uribe. If that were to happen, the United States should extend as much assistance as possible. Until that day, however, U.S. aid will have to be limited so as not to assist the corrupt elements of the Honduran government. In Colombia, on the other hand, the United States needs to be careful not to cut off its aid too soon, as the Obama administration appears in danger of doing. For all of its success, Bogotá still needs help to ensure that FARC and its narco-trafficker allies do not stage a dismaying comeback. ♦

# Almost Committed

The House GOP inches toward mental-illness reform. **BY MARK STRICHERZ**

When his House subcommittee held the forum “After Newtown: A National Conversation on Violence and Severe Mental Illness” in March, Rep. Tim Murphy (R-Pa.) received bipartisan praise for what was to be the first of three hearings on the topic. Murphy, chairman of the Energy and Commerce Committee’s oversight and investigations subcommittee, took the job in December, a few days before the atrocity in a suburban Connecticut elementary school. He earned good will from both sides of the aisle simply by examining the links between violence, severe mental illness, and federal policy, something Congress hadn’t done in decades. “You’re my hero for raising these issues,” Dr. Harold Koplewicz, a member of Vice President Biden’s task force on mental illness, gushed at the time. “I commend your leadership on this issue,” said Rep. Henry Waxman (D-Calif.).

Murphy is an unusual politician. With his wireless oval glasses and smooth baritone voice, the 60-year-old comes across more like the child psychologist he was than a legislator. Few politicos quote from memory the medical journal the *Lancet*, and his knowledge of the topic has not been lacking.

At the subcommittee’s latest hearing, on May 22, his opening statement was crisp and dispassionate. He described the nub of the problem:

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“In 2009, the Substance Abuse and Mental Health Services Administration, otherwise known as SAMHSA, estimate[d] that about 11 million U.S. adults had serious mental illness, and 40 percent of these individuals did not receive treatment,” he said. “If we’ve learned one thing from the horrible acts committed by Seung-Hui Cho at Virginia Tech in 2007, Jared Loughner in Tucson, James Holmes at the Aurora, Colorado, theater in July 2012, or Adam

Lanza, it is this: that individuals with untreated severe mental illness are a significant target for self-directed violence, including suicide, or violence against others.” And he pointed to a solution: “Assisted Outpatient Treatment (AOT) laws—a less restrictive alternative to involuntary commitment. Numerous academic studies have shown AOT to be incredibly effective in reducing re-hospitalizations and re-arrests among, until then, untreated individuals with serious mental illness.”

But for every Tim Murphy in the House Republican caucus, there is a Billy Long. The Missouri congressman serves on Murphy’s subcommittee and has a background in talk radio; he not only represents the Tea Party wing of the party, but the faction that has no professional or emotional link to the 62 mass shootings that have taken place in 30 states since 1982. Long won his seat in 2010 partly by pledging to support

a balanced budget amendment to the Constitution. He makes no pretense that his priority in Congress is anything other than to reduce federal spending.

At the last hearing, Long told a roundabout story that had no direct connection to mental-illness reform. It was in response to a complaint from SAMHSA administrator Pamela Hyde, the lead witness, that sequestration had wiped out 5 percent of the agency’s \$3.4 billion annual budget. A bear of a man who speaks in a flat Missouri twang, the 57-year-old former auctioneer said he bought a copy of Bob Woodward’s *The Price of Politics* at a Barnes & Noble bookstore in downtown Springfield on September 12, 2011,

finished reading the book two or three months later, watched Woodward on TV, and ran into the esteemed journalist the same day. “I believe, but I’m not sure, it was on page 326,



Bill Cassidy, left, and Tim Murphy

because I don’t know how to read a book on an iPad. But on page 326 it talks about where sequestration came from. Do you know where it came from? Whose idea it was?” he asked Hyde.

Long’s disquisition befuddled even seasoned legislators. Democrat Diana DeGette, who has represented her Denver district for nearly 17 years, moved her head back and narrowed her eyes at Long. Murphy and other House Republican leaders on mental-illness reform don’t admit this on or off the record, but their legislative plans seem crafted with the caucus’s Billy Longs in mind.

The leading experts in mental illness agree on two facts. First, severely mentally ill people are different not only from you and me, but also from those with severe physical illnesses. As psychiatrist E. Fuller Torrey noted at the March 5 hearing, “at least half of them have an impairment of their understanding of the fact that they

CASSIDY: NEWSWEEK

are sick, and the reason is they have damage to the parts of their brains that they use to think about themselves." This is anosognosia, or lack of self-awareness, which afflicts not only patients with Alzheimer's disease but also those with bipolar disorder and schizophrenia. He discussed his late sister, Rhoda, a schizophrenic who thought she had been put into a mental hospital because of a cold. Koplewicz, who also serves as president of the Child Mind Institute in New York, affirmed Torrey's conclusion at the hearing.

Experts also concur that assisted outpatient treatment laws work. A 2001 RAND report, which summarized the findings of two clinical trials, found that a "sustained outpatient commitment order (180+ days), when combined with intensive mental health services, may increase treatment adherence and reduce the risk of negative outcomes such as relapse, violent behavior, victimization, and arrest." Forty-four states have adopted such a program, including New York, whose "Kendra's Law" is the best known. There is wide agreement that states need to provide adequate funding for assisted outpatient treatment laws to yield the outcomes the RAND study described. "We agree that [these laws] need to focus on services, but most states don't fund them," Michael Fitzpatrick, executive director of the National Alliance on Mental Illness, said in an interview.

What leading practitioners disagree on is the extent to which the severely mentally ill need better access to treatment—and whether they should be forced to take medication. Koplewicz noted the country has only a few thousand child psychiatrists, while Fitzpatrick said schoolteachers and counselors often fail to recognize the symptoms of severe mental illness in students. By contrast, Torrey argued that a lack of access to treatment is not the main problem; the Virginia Tech, Tucson, and Aurora shooters had been diagnosed as severely mentally ill. He contends courts and local agencies

don't force a severely mentally ill person to take his meds unless he has committed violence.

President Obama, who will lead a White House conference on mental illness June 3, proposes spending \$235 million to help teachers, counselors, and first responders at schools and universities identify symptoms of mental illness. A bipartisan Senate proposal, which the upper chamber passed as an amendment April 18, mirrors the administration's plan, but without the funding. Neither proposal addresses the problem Torrey identified: Cho, Loughner, and Holmes had been diagnosed at their schools as psychotic, yet none was forced to remain on medication.

**U**nfortunately, the House Republicans' version is little better on this score. A Murphy aide indicated that the congressman will seek to eliminate a \$36 million SAMHSA grant awarded to civil-rights organizations that advocate for mentally disordered patients who avoid taking their medication. "I'm supportive of assisted outpatient treatment, but we have to make a clear lobbying effort," Murphy said.

Rep. Bill Cassidy of Louisiana, a physician, has two further suggestions: Family members of the mentally ill should be able to get full access to their records from doctors, who typically cite a 1996 federal health-privacy law to block them; and they should have greater discretion in committing their mentally ill children to institutions. "A family requesting therapy for their child whose doctor does not feel it's appropriate should be able to go before a judge to get treatment," Cassidy said.

Torrey has a better plan. He would give states a \$200 million block grant they could use to fund assisted outpatient treatment laws. "I think what we can do is use federal money that's already available and out there to provide models so that we can understand what proper treatment can and should be," he said at the March forum, arguing that AOT

"decreases hospitalization, decreases violence, and also saves money. This is a proven way to treat people, especially those who are not aware they are sick themselves."

Torrey is not a natural ally of the GOP. A registered Democrat, he has urged new federal dollars to help treat the severely mentally ill. Yet he has emerged as a serious policy wonk for conservatives seeking to respond to the Tucson, Aurora, and Newtown massacres. He called for the abolition of SAMHSA in an op-ed for *National Review Online* two years ago and criticized the federal government's role in the deinstitutionalization of the mentally ill in the pages of the *Wall Street Journal*. In his heavily liberal profession, he has long been considered an iconoclast. "People don't see Fuller as representing the conservative movement, but they do think of his approach as conservative," said Charles Curie, the director of SAMHSA for the first five years of the George W. Bush administration.

Torrey's plan would cost less than the Obama administration's proposal. It would not add to the federal debt. It would not change the nation's gun laws. It would result in government savings in the long run. And it would help prevent mass shootings.

The public is not indifferent to the plight of the mentally ill. In a December Gallup poll, 82 percent said they would support increasing government spending for mental health programs for young people; 67 percent of those were Republicans. Adopting Torrey's proposal would seem to be a no-brainer for congressional Republicans. Yet not a one—not Murphy, not Cassidy—has. The post-compassionate-conservative GOP is ignoring a golden opportunity to appeal to suburban swing and independent voters without alienating deficit hawks and gun-rights supporters.

Torrey is not crushed by the absence of patronage for his plan: "Actually, I'm encouraged," he says. "Congress hasn't looked at the issue in 30 years." ♦

# Obama's Asteroid

*The decline of NASA and the senseless priorities of our government*

By P.J. O'Rourke

**R**ecently I spent some time surrounded by people who are smarter than I am, who are braver and more committed to human progress, who know more about science and technology, more about business and industry, and more about budgets and expenditures.

This is an experience Congress and the White House should have. Except Congress and the White House have this experience every day. And me too, but at least I know when it's happening.

It was happening with unusual intensity last month in Colorado Springs at the 29th National Space Symposium. This is the biggest and most important annual worldwide gathering of the biggest and most important organizations and entities in the biggest and most important industry in the solar system. The biggest, certainly, in terms of reach. What other enterprise has sent employees on a 238,900-mile business trip to the moon? And the most important industry in the solar system by definition. No other industry is out there. The rest of the working world is stuck on Earth.

The Space Symposium Big Bang was the result of an astrophysical singularity called the Space Foundation, a global nonprofit established in 1983 "to advance space-related endeavors to inspire, enable and propel humanity." That is, to get people to look up and go "aww" instead of look down and go "eww."

The Space Foundation cosmos expanded rapidly. By now the corporate, governmental, civilian, and military

galaxy of its annual symposium encompasses supernovas of luminary speakers, quasars of radiant panel discussions, constellations of participants from more than 30 nations, magnetic fields of 160 exhibitors, and 9,000 attendees in orbit. Senior management gravitational pull was felt from Lockheed Martin, Northrop Grumman, Boeing, Raytheon, ATK, Arianespace, General Dynamics, Pratt & Whitney Rocketdyne, SpaceX, United Launch Alliance, and scores of other corporations of great mass and magnitude. A Perseids meteor shower of astronauts was seen—Buzz Aldrin included. And from the firmament of our armed forces did shine the brightest stars, some with four of them on their shoulders.

One evening I had the privilege of sitting at dinner with General William Shelton, commander, U.S. Air Force Space Command. Alas, the only launch capabilities about which I have any technical knowledge involve golf clubs. We discussed payload targeting frustrations on the links, and Gen. Shelton gave a polite hearing to my theory that if we dumped all the other

clubs and just carried a 5 iron we might play a better game.

"Putting included?" asked Gen. Shelton.

"Putting included," I said, glad to be able to answer a technical question.

**I** got to meet Gen. Shelton because I serve on the Space Foundation's board of directors, although my only qualification for doing so is a kind of clownish enthusiasm about outer space. Over the years I have tried to fulfill my civic duty, aiding in the functions of various worthy organizations, this magazine for example. Somebody has to tie the balloon animals.

But at the National Space Symposium the joke was the

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GARY LOCKE

U.S. government. Here was the world's foremost congregation of people and things having to do with space, and who didn't show up? NASA.

The National Aeronautics and Space Administration itself shouldn't be blamed. The Air Force might not have been at the Space Symposium either, if it weren't for Space Command's being based in Colorado Springs and its brass willing to drive their own cars across town and pay for the gas.

Sequester has every government agency trying not to look wasteful. This means all of them are going undercover in deep disguise. Knock on the door of NASA headquarters and they'll probably tell you the initials stand for "Nation's Abstemious Spending Advisory—go away, we're counting nickels!" Also, civil service muck-a-mucks are still sensitive about the 2010 GSA \$822,751 conference beano in Las Vegas. Never mind that those government employee partygoers were stimulating the economy in a city that bore the full brunt of the '09 recession and were also, at least temporarily, too busy and snozzled to spend the rest of the General Services Administration's \$26.3 billion annual budget, so it was a win-win situation all around for the public.

Government travel to any kind of meeting has been on a short tether. You'll recall our ambassador to Libya had a meeting with an angry group of armed fanatics at Benghazi last year, and the U.S. government didn't send extra personnel.

Nonetheless, a National Space Symposium without NASA was like a White House Correspondents' Dinner without journalists. That is to say, it didn't matter as much as you'd think. The White House Correspondents' Dinner was long ago taken over by a business that is wealthier and more powerful than journalism, the business of manufacturing celebrities. Something analogous is taking place in space. NASA's \$17.77 billion 2012 budget is less than 6 percent of the \$304.3 billion global space economy.

That isn't NASA's fault either. The 18,000 NASA employees are full of galactic talents and abilities and are ready to accomplish whatever they're directed to do. The fellow who directs them is no slouch either. NASA administrator Charles Bolden is a Naval Academy grad, retired Marine Corps general, former test pilot and astronaut, and has a graduate degree in science. But, of course, NASA is a political instrument. And our political system does not seem to be able to figure out what NASA is instrumental for.

This didn't start with the devolution of the Space Shuttle into a giant extinct flightless bird, or the surly Russian ticket-taking for a trip to the International Space Station as

if their Soyuz rocket were a wildly expensive carnival ride, or the cancellation of President George W. Bush's Constellation Program with its majestic Ares rocket able to propel democracy-building to Mars.

Funding for the original manned Voyager Mars Program was scratched in 1968, before humans had gotten out of Low Earth Orbit. Mid-'60s plans for a Venus fly-by with astronauts actually flying by it met the same fate.

Space has always been confusing to politics. Confusion was already evident in President Kennedy's 1961 address to a Joint Session of Congress, where he famously said, "I believe that this nation should commit itself to achieving the goal, before this decade is out, of landing a man on the moon and returning him safely to Earth." (And let's thank him for that final dependent clause.)

But he didn't say why. Kennedy had some phrases—"a great new American enterprise" and "time for this nation to take a clearly leading role in space achievement." (After that typed line in his reading text, the president scribbled an afterthought, "which in many ways may hold the key to our future on Earth." But no ways were specified.)

Kennedy did not make an emphatic call for a "space race." In fact he said, "This is not merely a race." And in his 1963 speech to the U.N. General Assembly he proposed that the United States and the Soviet Union team up in their attempts to put a man on the moon.

Perhaps the closest we get to a purely political explanation of space programs is from President Kennedy's much-quoted 1962 speech at Rice University: "We choose to go to the moon in this decade . . . not because [it is] easy, but because [it is] hard, because that goal will serve to organize and measure the best of our energies and skills, because that challenge is one we are willing to accept." And the same could have been said about a 50-mile hike. Pursuing knowledge for the sake of knowledge is not a political concept or politicians would know a lot more.

Fifty-one years later President Obama's space entree is the same serving of vagaries, hold the pizzazz. In the NASA section of the president's 2014 budget proposal, the challenge is "to rendezvous with a small asteroid . . . and move it to a stable location outside the Moon's orbit. . . . Eventually, astronauts would visit the retrieved asteroid . . . fulfilling the President's goal of sending humans to an asteroid by 2025."

Or, as one of the Space Symposium participants put it, "To boldly go where no man has ever shown much interest in going."

The budget proposal paragraph on asteroids (which shows every sign of having been written by a junior staffer) ends, “In addition, NASA will accelerate its efforts to detect and characterize potentially hazardous Earth asteroids, to both address the threats and clarify the opportunities these objects represent.” Threat? Destruction of the Russian city of Chelyabinsk. Opportunity? Destruction of the Russian city of Chelyabinsk.

**T**he Space Foundation gave its Lifetime Space Achievement Award posthumously, this year, to Neil Armstrong, for one small step for man. Neil’s son Mark spoke briefly at a reception after the award ceremony. “I’m 50,” he said, “so I’ve just had time to see the U.S. space program go from its peak to what I hope is its nadir.”

Meanwhile other people have been taking one giant leap for mankind. Space turns out to be extremely valuable—a great new *private* enterprise. Commercial revenues from space services, products, support industries, and infrastructure totaled \$225.87 billion in 2012. That’s almost three times the amount that governments around the world spent on space last year. And let us not forget, when governments spend money on space, much of it is spent on intercontinental ballistic missiles, spy satellites, military command and control, drone guidance, and—for all that those of us who have a “Bottom Gossip” security clearance know—orbiting death rays. (DoD’s space budget is 65 percent larger than NASA’s.) Governments get world domination. We get SiriusXM satellite radio. And we’re outspending governments in space anyway.

The words “Space Age” have a quaint, nostalgic tone—sitting on midcentury modern furniture watching *The Jetsons*. But get out of the butterfly chair and fold the rabbit ears on the Philco—you’re *living* in the Space Age.

Without the space industry all those dishes hanging off window sills, receiving HD television reception and providing high-speed Internet connection in even the most remote corners of the world, would be just so many woks gone wrong.

Without the space industry, the only way you could use your satellite phone to communicate with someone would be by bonking him on the head with it. And satellite phones aren’t even big enough anymore to be very useful for that.

Meteorological predictions would be Grandpa’s mutterings about how his joints ache. There would have been no forewarning of Superstorm Sandy, and former members of the *Jersey Shore* cast might have been blown all the way to Canandaigua. What a natural disaster that would have been for New York’s Finger Lakes region.

Your GPS would be an old coot perched on your dashboard, chewing a stalk of hay. “Git on over to Old Pike

Road. ’Cept they call it County Route 738 nowadays. An’ turn left where the Hendersons’ barn burned down in ’63.”

Air traffic control is largely satellite dependent. Absent satellites, when you’re squeezed into the middle seat on a flight to Orlando, you might not just wish you were dead, you might get that way.

And you couldn’t go to Google Earth to find out whether your neighbors are raising pigs in a backyard pen. You’d have to take a stepladder and peek over the fence. Nope, just dirty kids and a very dilapidated swing set.

**W**hich brings us back to Congress and the White House. For more than 60 years it has been almost a rule of American politics that the less important an issue is to the American public, the more serious the American political system is about it—the United Nations, Korea, McCarthyism, the Suez Crisis, the wheat surplus, Quemoy and Matsu, the Peace Corps.

Back when we were the only rich nation on earth and the unemployment rate was half of what it is today, Congress and the White House launched a War on Poverty. When people customarily dropped dead in their sixties and medical treatment for the aged consisted of “Take two aspirin and call me if you don’t wake up in the morning,” Congress and the White House created an enormous Medicare program. And when we were flinging things and people into space for no particular reason—to organize and measure the best of our energies and skills—NASA was receiving nearly 4.5 percent of the federal discretionary budget. Now it gets less than 0.5 percent.

The rule works in reverse too. The more important an issue is to the American public the sillier the political system gets. When information about the dangers of the 9/11 attack was lost among federal security bureaucracies, Congress and the White House added another layer of federal security bureaucracy. When the financial system fell down, Congress and the White House gave money to the people who caused the collapse instead of the people the system fell on. When the cost and complexity of medical care began to worry everyone, Congress and the White House changed the subject and bent our ear about insurance instead of health until we all felt like we’d been button-holed at a Rotary meeting by the local John Hancock agent determined to explain the relative merits of whole life and term. And now the scope of our federal budget deficit is matched only by the scope of the nothing Congress and the White House are doing about it.

There’s a lesson in all this, maybe a *universal* lesson. I don’t pretend to be wise enough to know what the lesson is. But let’s send our children to the planets and the stars. And let’s keep them out of Congress and the White House. ♦

# See No Evil

*President Obama may think that the threat from al Qaeda is receding. It isn't.*

BY THOMAS JOSCELYN

**D**uring his speech at the National Defense University on May 23, President Obama sought to reassure Americans that they are “safer” because of the administration’s “efforts” to fight terrorism. The controversy over the administration’s handling of the September 11, 2012, terrorist attack in Benghazi, Libya, had been swirling for months. And on April 15, two jihadists set off bombs at the Boston Marathon, killing three people and wounding more than 250 others.

“Now, make no mistake, our nation is still threatened by terrorists,” Obama conceded. “From Benghazi to Boston, we have been tragically reminded of that truth.” Nonetheless, the president continued, “we have to recognize that the threat has shifted and evolved from the one that came to our shores on 9/11. With a decade of experience now to draw from, this is the moment to ask ourselves hard questions—about the nature of today’s threats and how we should confront them.”

The rest of his speech was devoted to trumpeting the Obama administration’s handling of the fight against al Qaeda, while arguing that the threat to Americans has receded. Obama also addressed the controversial drone program, saying it was “effective.” As proof, he cited a document written by Osama bin Laden. “Don’t take my word for it,” the president said, listen to bin Laden himself, who wrote: “We could lose the reserves to enemy’s airstrikes. We cannot fight airstrikes with explosives.”

Certainly, the drone strikes have been effective in killing al Qaeda terrorists. But it was a curious citation

to say the least. The two lines selected by the president were ripped out of context, and the full passage does not actually support the president’s point. Bin Laden’s words make it clear that, as one might expect, al Qaeda has moved its “reserves” out of the drones’ kill box in northern Pakistan. In the full passage, bin Laden speaks as if he represents the entire Muslim community (the Ummah), which of course he did not:

The Ummah should put forward some, but enough, forces to fight America. The Ummah must keep some of its forces on reserve. This will be in the Ummah’s best interests. The Ummah will use the reserve in the future, but during the appropriate time.

In the meanwhile, we do not want to send the reserves to the front line, especially in areas where the enemy only uses airstrikes to attack our forces. So, the reserves will not, for the most part, be effective in such conflicts. Basically, we could lose the reserves to enemy’s airstrikes. We cannot fight airstrikes with explosives!



*At the National Defense University, defining jihad down*

The rest of the 27-page document undermines the president’s case. “We still have a powerful force which we can organize and prepare for deployment,” bin Laden wrote. This cuts against the president’s claim that al Qaeda is mostly a spent force. And bin Laden emphasized that al Qaeda needs to “concentrate” its “jihad efforts in areas where the conditions are ideal for us to fight.” Bin Laden surmised that “Iraq and Afghanistan are two good examples.” Yet much of President Obama’s speech was devoted to proclaiming the “end” of the post-9/11 wars in both countries.

The president cited just one of the 17 bin Laden documents declassified and released to the American public. And those 17 documents are just a tiny fraction of the hundreds of thousands of documents and files captured during the May 2011 raid in Abbottabad, Pakistan, hardly sufficient for any robust analysis of the al Qaeda network.

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Still, the president's selective citation of bin Laden's files is illustrative of a larger point: When it comes to fighting al Qaeda and its affiliates, the president and his advisers see only what they want to see.

Throughout his speech, Obama used the word "define" in its various forms. Why? Because the president seeks to define the threat from al Qaeda and its affiliates in such a way that there is no longer any need for America to deploy large numbers of troops abroad.

"Beyond Afghanistan, we must define our effort not as a boundless 'global war on terror,' but rather as a series of persistent, targeted efforts to dismantle specific networks of violent extremists that threaten America," the president said. "In many cases, this will involve partnerships with other countries." The president then offered four examples intended to illustrate his point. In all four cases—in Pakistan, Yemen, Somalia, and Mali—others lead the fight on the ground. American airstrikes buttress the efforts of local partners, but the president made it clear that he wants to limit U.S. involvement: "Unless we discipline our thinking, our definitions, our actions, we may be drawn into more wars we don't need to fight, or continue to grant presidents unbounded powers more suited for traditional armed conflicts between nation-states," he said.

The president's solution: "We must define the nature and scope of this struggle, or else it will define us." And we must define a strategy based "not on fear, but on hard-earned wisdom." All of this defining, the president explained, "begins with understanding the current threat that we face."

And therein lies a major problem: When it comes to the threat we face, the enemy also gets a vote or, to use Obama's lexicon, a say in how the fight is defined. Al Qaeda and its affiliates do not think the war has ended. They are fighting in more countries than ever.

## AL QAEDA IS ALIVE

**T**here is much unfinished business in Afghanistan, despite the president's vow that American "troops will come home" and their "combat mission will come to an end." Al Qaeda maintains safe havens in Kunar and Nuristan Provinces and operates elsewhere. The Taliban remains closely allied with al Qaeda and associated groups. And the Taliban-led insurgency remains so robust that NATO's International Security Assistance Force (ISAF) stopped publishing statistics on the level of violence late last year. The last ISAF statistics available to the public show that the level of violence remains higher than before the Obama-ordered surge of American forces in 2010.

In Pakistan, al Qaeda and its allies maintain a safe haven in the northern part of the country, despite pressure from American airstrikes. And the Pakistani government

continues to be a duplicitous ally, sponsoring and protecting various al Qaeda-allied groups. The Tehrik-e Taliban Pakistan (TTP), or Pakistani Taliban, remains a threat after orchestrating the failed May 2010 bombing in Times Square. The State Department announced in September 2010 that the TTP has a "symbiotic relationship" with al Qaeda.

In neighboring Iran, al Qaeda maintains what the Obama administration has called a "core pipeline" for transiting fighters, money, and weapons to Afghanistan, Pakistan, and Iraq. This network, according to a July 2011 Treasury Department designation, exists under a formerly "secret deal" between al Qaeda and the Iranian regime. In April, the Royal Canadian Mounted Police announced that they had detained two terrorists who were plotting to derail a train traveling between New York and Canada. The Mounties said the terrorists received "direction and guidance" from "al Qaeda elements located in Iran," which is probably the same Iran-backed network uncovered by the Obama administration.

To Iran's west, in Iraq, the situation looks grim. "We ended the war in Iraq, and brought nearly 150,000 troops home," the president said during his speech. In reality, only America's role in the fight for Iraq came to an end. According to the U.N., April 2013 was the deadliest month in Iraq in nearly five years—that is, since before Obama was even elected. Al Qaeda in Iraq (AQI) has played no small role in the latest violence. Declared all but dead in 2010, AQI rebounded. According to Pentagon data cited by the Associated Press, AQI increased its operational capacity from 75 attacks per week in early 2012 to "an average of 140 attacks each week across Iraq" by the end of the year. AQI's ranks have swelled. The group has established new training camps, new safe havens, and a whole new arm in Syria—the Al Nusrah Front.

Obama mentioned Syria only in passing, saying that "we must strengthen the opposition in Syria, while isolating extremist elements," and that "unrest in the Arab world has also allowed extremists to gain a foothold in countries like Libya and Syria." These "extremists" include al Qaeda's Al Nusrah Front. In December 2012, the Treasury and State Departments announced that Al Nusrah was merely an "alias" for al Qaeda in Iraq. The threat from al Qaeda's rise has already been felt throughout the region, as Al Nusrah is pulling in recruits from throughout the Middle East and North Africa. And these recruits can return to their home countries to carry out acts of terror, as Jordan learned late last year when Al Nusrah veterans were caught planning a complex attack against the U.S. embassy there.

In Arabia, al Qaeda has aggressively expanded the scope of its operations since early 2009, when the Saudi and Yemeni branches of the terrorist network merged to form Al

Qaeda in the Arabian Peninsula (AQAP). On December 25, 2009, an AQAP suicide bomber tried to destroy a Detroit-bound plane. The group has attempted other attacks against the U.S. homeland since then. It is striking that as AQAP was ramping up its international plotting, the organization also significantly increased its capacity to seize and hold territory. AQAP even launched a new brand, Ansar al Sharia, for its local governance efforts. By 2011, AQAP had seized much of southern Yemen, only to relinquish territory as U.S.-backed Yemeni government forces expelled al Qaeda's operatives from their strongholds. AQAP retreated, ensuring that most of its forces would live to fight another day. In May, there were fresh reports that AQAP has once again captured villages in eastern Yemen.

Across the Gulf of Aden, in Somalia, Shabaab continues to wage an insurgency against African forces and has executed attacks inside neighboring Kenya and Uganda. Shabaab formally merged with al Qaeda in February 2012.

In Mali, Al Qaeda in the Islamic Maghreb made such stunning advances that France was forced to intervene in January. France's socialist president, François Hollande, repeatedly insisted in late 2012 that his country would not join the fighting inside Mali. But after AQIM and its allies seized much of northern Mali and threatened to sweep through the south, Hollande decided to put French boots on the ground. AQIM's forces relinquished control of key towns, but melted into neighboring countries.

Elsewhere in Africa and the Middle East, al Qaeda-linked groups continue to operate and expand. And in Arab Spring countries such as Tunisia and Egypt, al Qaeda-associated jihadists have adapted to the new climate, seeking to exploit a permissive operating environment that allows them to recruit a new generation for their cause.

## THE AFFILIATES ARE AS DEADLY AS THE CORE

When Obama looks at the map of al Qaeda's operations, however, he does not see a growing threat. The president often argues that the "tide of war is receding." His reasoning is as follows: If al Qaeda's affiliates, or allied groups, are not directly plotting mass casualty attacks on American soil today, then they are not a major threat to the United States and its interests.

What is remarkable about this logic is that the threats to the U.S. homeland have multiplied since Obama assumed office. AQAP, the Pakistani Taliban, and al Qaeda leaders inside Iran have all had a hand in targeting the

United States since 2009. Vigilance and Lady Luck have cooperated to spare American lives.

There is a widespread assumption held throughout the counterterrorism and intelligence communities that al Qaeda's "core" is a distinct enterprise from the terror network's affiliates. The "core" of al Qaeda is not well-defined beyond some hazy Western notion of al Qaeda's overall leader, now Ayman al Zawahiri, and the advisers and lieutenants immediately surrounding him. Nonetheless, Obama has seized on this distinction, making it the linchpin of his counterterrorism strategy.

From Obama's perspective, geographic proximity seems to be the characteristic that matters most when defining the core. "Today, the core of al Qaeda in Afghanistan and Pakistan is on the path to defeat," Obama claimed at the National Defense University. And because, in Obama's thinking, it was this "core" that attacked America on September 11, 2001, and that has suffered leadership losses with the raid in Abbottabad and drone strikes elsewhere, the threat from al Qaeda has dissipated.

Obama concedes "we've seen . . . the emergence of various al Qaeda affiliates" and that they are "lethal," but he is reassured because they are

"less capable" than the crew that attacked America more than a decade ago. For Obama, the "future of terrorism" consists primarily of "threats to diplomatic facilities and businesses abroad," as well as "homegrown extremists." The United States must "take these threats seriously, and do all that we can to confront them," but the president sees the possibility of another 9/11-style attack as remote.

We "have to recognize that the scale of this threat closely resembles the types of attacks we faced before 9/11," Obama says. We should therefore "shape our response" to deal with it "smartly and proportionally," because "these threats need not rise to the level that we saw on the eve of 9/11."

But the distinction between "core" al Qaeda and the affiliates has always been an empty one. All of the official al Qaeda affiliates—Al Qaeda in the Arabian Peninsula, Al Qaeda in Iraq, Al Qaeda in the Islamic Maghreb, and Shabaab in Somalia—have sworn an oath of loyalty (*bayah*) to Ayman al Zawahiri. Earlier this year, the head of the Al Nusrah Front in Syria reaffirmed his oath of loyalty as well. This is no small matter. It means that these groups are committed to following Zawahiri's orders and pursuing al Qaeda's strategic vision, which goes far beyond attacking America.

In practice, it is of course impossible for Zawahiri to

manage the day-to-day operations of the affiliates. But he does not need to—decentralization is a source of organizational strength, not weakness. If one head of the jihadist hydra is cut off, others live to fight another day. Still, there is abundant evidence that al Qaeda's senior leadership communicates with, and sets the agenda for, the affiliates. Al Qaeda's senior leaders also rely upon loyal followers who will advance the organization's cause even absent day-to-day guidance.

Consider just some of the terrorists who run al Qaeda's operations outside of Afghanistan and Pakistan. Headquartered in Yemen, Al Qaeda in the Arabian Peninsula is led by Nasir al Wuhayshi, a terrorist who served as Osama bin Laden's aide-de-camp for several years prior to 9/11. Wuhayshi was bin Laden's protégé and remained loyal to the al Qaeda master even through the darkest times, including the Battle of Tora Bora in late 2001, when all could have been lost. Bin Laden later returned the favor, rejecting a plea by some AQAP members to replace Wuhayshi as their leader with Anwar al Awlaki, the charismatic al Qaeda ideologue who has since been killed in a drone strike. Some of Wuhayshi's lieutenants also served al Qaeda in Afghanistan well before the 9/11 attacks. And together they are advancing al Qaeda's global jihadist agenda, simultaneously fighting for territory inside Yemen while overseeing plots against the United States.

By what standard is Wuhayshi today not a core member of al Qaeda? Is the reason simply that he lives in Yemen, and not Afghanistan or Pakistan?

According to the Obama administration, the terrorist who leads al Qaeda's network inside Iran today is a Kuwaiti named Muhsin al Fadhli. Few al Qaeda terrorists were trusted with foreknowledge of the 9/11 attacks; al Fadhli was one of them. The network that al Fadhli oversees is the result of an agreement with the Iranian regime that was brokered by Osama bin Laden's right-hand man.

A Defense Department report ("Al Qaeda in Libya: A Profile") published by the Library of Congress in August 2012 identified at least two senior operatives who were dispatched to Libya to oversee al Qaeda's efforts there. The first is known as Abu Anas al Libi, who was long ago convicted of terrorism charges for his role in al Qaeda's 1998 embassy bombings in Kenya and Tanzania. Abu Anas is coordinating his efforts with al Qaeda's senior leadership in Afghanistan and Pakistan. The second terrorist identified in the report, Abd al Baset Azzouz, was sent to Libya by Ayman al Zawahiri.

In March, the State Department offered a \$5 million reward for information leading to the capture of an American known as Jehad Mostafa, who is believed to be Ayman al Zawahiri's emissary to Shabaab, al Qaeda's affiliate in Somalia.

There are credible reports that senior al Qaeda operatives, including a member of the group's Shura council, have gone to Syria. And other core al Qaeda members have returned to their home countries in the wake of the Arab Spring. One declassified Abbottabad document, not cited by the president, shows that Osama bin Laden recommended that a terrorist named Mohammed Islambouli leave northern Pakistan for Kunar, Afghanistan. Mohammed's brother, Khaled Islambouli, was the assassin who killed Egyptian president Anwar Sadat. While bin Laden was willing to lose some al Qaeda leaders, he was not willing to lose Mohammed Islambouli, who is the equivalent of royalty in jihadist circles and is today a free man inside Egypt.

These are just some of the men who can be counted on to advance al Qaeda's agenda outside Afghanistan and Pakistan. It does not make sense to consider them anything but core al Qaeda members.

**A**l Qaeda is fighting for control of territory from South Asia, through the Middle East, and into North Africa. In some locales, al Qaeda has established safe havens. In others, it has had its gains reversed or been forced into a stalemate. The right course for combatting al Qaeda's aggression, including the appropriate uses of American military force, should be a matter of debate. However, President Obama seeks to "define" the al Qaeda threat in such a way that this debate can be avoided.

Obama is not interested in the bigger picture. Thus, the president celebrates the "end" of the Iraq war, even as al Qaeda has redoubled its efforts in the country and expanded into neighboring Syria. He tells us that the war in Afghanistan will come to an end, even as al Qaeda holds onto territory and its allies vie for supremacy in the country. Obama says that others should lead the fight against al Qaeda in Mali, Somalia, Yemen, and elsewhere. In no theater of war, except homeland security, does Obama think that America should lead the way. The president simply chooses not to see that each of these conflicts is part of a cohesive international challenge to the United States and its allies.

That is, however, the way Osama bin Laden saw it and the way his successors in al Qaeda see it. The bin Laden document cited by Obama during his speech at the National Defense University also contains the following passage:

Praise be to God, the jihad war is ongoing, and on several fronts. The Mujahidin work and may God give them the strength to endure on the jihad path will continue to target the guardian of universal apostates, America, until it becomes weak. Once America is weak, we can build our Muslim state. ♦

# The Case Against Deference

*Judges should be unafraid to review government actions*

BY DAVID B. RIVKIN JR.  
& ELIZABETH PRICE FOLEY

**F**or at least half a century, judicial restraint has been the clarion call of the conservative legal movement. After the Warren Court era, *Roe v. Wade*, and very nearly a “right” to welfare benefits, it was not surprising that conservatives would seek to rein in judicial self-aggrandizement.

The principal conservative response was to promote judicial deference: Judges should resist the temptation to legislate from the bench and “defer” to the political branches. Unfortunately, time has shown that this response was too blunt. Particularly in constitutional cases, judicial deference has led to a steady expansion of government power. This, in turn, has undermined the delicate constitutional architecture, which calls for a federal government of limited and enumerated powers.

Fortunately, a younger generation of conservative lawyers has come to recognize that there is no principled distinction between inventing new rights, unmoored from the Constitution’s text or history, and refusing to uphold constitutionally anchored limits on government power. In both instances, judges are ignoring the Constitution and engaging in—for lack of a better term—judicial activism. Judicial deference may have reined in judicial power, but at an unacceptable constitutional price. For both doctrinal and pragmatic reasons, the concept needs rethinking.

First, the “counter-majoritarian difficulty” that lies at the heart of judicial restraint has been oversold. The label itself suggests that judges should esteem current majoritarian preferences and be loath to overturn them.

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But why, when the Constitution instructs otherwise? Article VI declares that the Constitution is the “supreme law of the land,” and trumps conflicting ordinary laws. Judges take an oath to “support this Constitution,” reflecting their duty to heed the constitutional language. Enforcing the written Constitution—not reflexively deferring to extant legislative majorities—was (and still is) the will of We the People. If the people desire constitutional change, Article V provides the mechanism, allowing every generation to put its stamp on our fundamental legal charter.

In *Federalist 78*, Alexander Hamilton described the crucial judicial role in ensuring that the Constitution reigns supreme, explaining that judicial independence was “peculiarly essential in a limited Constitution,” where the government possessed only enumerated powers. In such a government, he observed, “[l]imitations of this kind can be preserved in practice no other way than through the medium of courts of justice, whose duty it must be to declare all acts contrary to the manifest tenor of the Constitution void. Without this, all the reservations of particular rights or privileges would amount to nothing.” Hamilton and other Framers understood that robust judicial review was essential to enforce limited and enumerated powers.

Second, the virtues of judicial deference have declined over time. Early Supreme Court decisions justified deference as necessary to ensure that the newly established federal government could fulfill its essential responsibilities. As Chief Justice John Marshall explained in the famous 1824 case *Gibbons v. Ogden*, a “narrow construction” of government powers “would cripple the government, and render it unequal to the object for which it is declared to be instituted.” Accordingly, the Court concluded “we cannot perceive the propriety of strict construction, nor adopt it as the rule by which the Constitution is to be expounded.”

Deference to exercises of government power arguably made more sense in the republic’s early days, to ensure that federal power could accomplish the Constitution’s

basic, enumerated ends. But as the administrative state has matured, the sheer weight of government has grown exponentially, and every new accretion weighs more heavily on individual liberty. Complex statutory frameworks increasingly operate at cross-purposes, and statutes rarely get repealed, with new regulations being piled on top of old ones. Today, the cumulative reach of government power is far more than adequate to counsel judges against knee-jerk deference to all exercises of government power. The unfolding IRS scandal, accompanied by the Obama administration's remarkable claim that the president should not oversee the federal government's law enforcement activities, makes the need for vigorous judicial review of governmental actions all the more apparent. The courts must unapologetically enforce constitutional boundaries to facilitate trust in, and accountability of, government.

Third, the early Court's notion of deference was distinct from its modern incarnation. Today's judicial deference is the product of the progressive era of the late 19th and early 20th centuries. Judges schooled in the original understanding had no qualms about being perceived as "counter-majoritarian," conceptualizing their role as enforcing the written Constitution against the daily assaults of ordinary legislation. Progressives, who wanted to remake

American society, viewed such judges and the written Constitution as an impediment. Achieving progressive goals was possible only if judges could be *restrained* from scrutinizing ordinary laws for adherence to higher constitutional principles.

One of the most powerful early advocates of judicial deference was progressive Harvard law professor James Bradley Thayer, who, in 1893, argued in the *Harvard Law Review* that judges "can only disregard [an] Act when those who have the right to make laws have not merely made a mistake, but have made a very clear one, so that it is not open to rational question." He justified this "rational basis" review by asserting that the Constitution "often admits of different interpretations; that there is a range of choice and judgment," and that a judge's role "is merely that of fixing the outside border of reasonable legislative action." Thayer remarkably asserted that, in applying such light judicial review, "virtue, sense, and competent knowledge are always to be attributed to that [legislative] body." It is ironic that modern conservatives, concerned about the freewheeling

behavior of liberal judges during the Warren Court era, have chosen as their principal bulwark against activism a doctrine of judicial deference whose genesis lies in the progressive era's desire to expand government power.

The fourth problem with judicial deference is pragmatic, stemming from the judiciary's inconsistent application of restraint. Since the New Deal, economic regulations, for one example, have received the utmost deference. Yet when it comes to so-called individual rights—a category that, for some inexplicable reason, does not include economic rights—courts jettison deference and apply heightened scrutiny. This bifurcation between "individual" and "economic" rights makes zero sense, as neither the Constitution itself, nor any theory of individual rights, suggests that the former are more important than the latter, or indeed that they are different in kind. The artificial distinction, moreover, invites judicial manipulation and selective invocation of aggressive scrutiny.

In 2005, for example—after over 200 years of constitutional history—the Supreme Court, in *Roper v. Simmons*, determined 5-4 that the death penalty for 17-year-olds violated the Eighth Amendment's prohibition of cruel and unusual punishments.

Just 15 years earlier, in *Stanford v. Kentucky*, the Court had decided precisely the opposite. According to the *Roper* majority, the Constitution's meaning changed in the intervening 16 years because a "majority of States have rejected the imposition of the death penalty on juvenile offenders under 18, and we now hold this is required by the Eighth Amendment."

Since 20 of the 38 states that allowed the death penalty at the time of *Roper* also allowed it for 17-year-olds, the Court cooked the numbers. It included in its calculations 12 states that prohibited the death penalty altogether, leading it to find a "consensus" of 30 states against the juvenile death penalty. As Justice Scalia's dissent observed, this "is rather like including old-order Amishmen in a consumer-preference poll on the electric car. Of course they don't like it, but that sheds no light whatever on the point at issue," because a total prohibition on the death penalty reveals nothing about whether juveniles should receive an exemption.

The *Roper* decision disregarded the policy preferences of at least 20 states—policy preferences that neither the Constitution's text nor its historical

context condemned—based on the “evolving standards of decency” that five justices wanted the Eighth Amendment to reflect.

Similarly, in the 1980 decision *Stone v. Graham*, a 5-4 Supreme Court concluded that requiring display of the Ten Commandments in public schools—funded entirely by private dollars—violated the First Amendment’s Establishment Clause. The *Stone* majority believed posting the commandments had no secular educational purpose, despite the fact that they are the foundation upon which much of the Western world’s legal codes rest.

The *Stone* and *Roper* decisions did not “defer” to the reasoned policy judgment of legislators; quite the opposite. Even though legislators had rational reasons for believing that a 17-year-old is capable of cold-blooded murder and deserving of the death penalty, or that posting the Ten Commandments may have a positive, non-religious educational effect, the Supreme Court was eager, under the guise of constitutional construction, to impose its own views and stifle further democratic debate.

In contrast to the overly aggressive scrutiny applied in “individual rights” cases such as *Roper* and *Stone*, the Supreme Court has shirked its duty to scrutinize many other exertions of government power. The net result is an odd mixture of judicial activism and restraint, whereby judges actively and unapologetically overturn laws purported to infringe certain favored individual rights, yet simultaneously espouse a duty to be restrained in reviewing laws alleged to exceed the proper scope of government power.

Take the case of *Grutter v. Bollinger* (2003), in which the Court was asked to determine the constitutionality of the University of Michigan law school’s use of race as a “predominant” admission factor. An unsuccessful white applicant asserted that such a race-conscious policy violated the Constitution’s guarantee of equal protection.

The law school claimed race-based admissions were needed to achieve a “critical mass” of minority students, needed for the educational benefit of “diversity.” A five-justice majority agreed, concluding, “The Law School’s educational judgment that such diversity is essential to its educational mission is one to which we defer.”

The *Grutter* majority did not see the case as involving an individual’s right to be free from state-sponsored racial discrimination, but instead as one involving the right of a public university to define and implement its

educational mission. Consequently, the Court deferred to the university, allowing it to exercise its power the way it saw fit. The *Grutter* Court’s choice—to view affirmative action as an exercise of power requiring deference rather than an individual right requiring scrutiny—emphasizes the manipulability inherent in the modern deference doctrine.

The Supreme Court’s decision last year in *National Federation of Independent Business v. Sebelius*, upholding the Affordable Care Act, further shows the extent of modern judicial contortions to uphold aggressive exercises of government power, even when it harms individual liberty. A 5-4 majority upheld the act’s mandate for individuals to buy health insurance as a “tax,” even though the president and congressional leaders repeatedly and publicly denied that the mandate was a tax, and the law specifically denominated the mandate as a “penalty” while simultaneously labeling multiple other provisions as taxes.

The *NFIB* majority opined that the mandate “may be reasonably characterized as a tax” even though it was not “the most natural interpretation” of it. And since the Constitution allows Congress to impose taxes, the

majority concluded, “it is not our role to forbid it, or to pass upon its wisdom or fairness.”

Like *Grutter*, *NFIB v. Sebelius* demonstrates the breadth of deference in cases viewed by the Court as challenges to government power. And the *NFIB* majority didn’t merely *defer*, it rewrote a statute to survive constitutional attack. Leaving aside the fact that functioning as the legislature’s scrivener is not a proper judicial role, the Court was oblivious to the fact that forcing the political branches to articulate what they are enacting is essential to accountability, one of the key purposes of the Constitution’s separation of powers. Indeed, had the Obama administration publicly described the mandate as a tax, it would never have passed, even in a Democratic Congress.

The *NFIB* decision also illustrates the fifth problem with judicial deference: It has decayed into virtual rubber-stamping. Courts bless government actions using either the rationale advanced by the government or—if that proves unsatisfactory—a rationale the courts themselves concoct. This is a far cry from relying on reasons advanced by the government at the time a statute or regulation was adopted.

For example, in *Williamson v. Lee Optical Co.* (1955), the Supreme Court upheld an Oklahoma law that made

## Upholding laws if judges can dream up some legitimate justification for them is not being deferential; it is being biased in favor of the government and against the citizen. The net effect is to rubber-stamp government power.

it illegal for anyone other than an optometrist or ophthalmologist to replace eyeglass lenses. Opticians challenged the law, asserting that it violated both the Equal Protection Clause and the liberty protected by the Due Process Clause. They offered evidence that opticians could just as safely make replacement lenses, and that optometrists and ophthalmologists received no special training in lens-making. The evidence suggested that the law was not designed to guard the public from poor quality lenses, but to protect optometrists and ophthalmologists from the healthy competition of less expensive opticians.

The *Williamson* Court nonetheless deferred to the legislature, opining it “might have” concluded that limiting lens replacement to optometrists and ophthalmologists was a good thing and that the legislature “need not be in every respect logically consistent in its aims to be constitutional.” It was sufficient that the Court itself could imagine some rational basis for the law, even if the legislature did not actually rely on the basis identified by the Court.

As cases like *Williamson* show, modern judicial deference doesn’t require the government to prove anything at all to justify exertions of power. Judges must uphold the law if the legislature could have theoretically believed that the law serves a legitimate purpose (even if it actually doesn’t).

Upholding laws if judges can dream up some legitimate justification for them is not being deferential; it is being biased in favor of the government and against the citizen. The net effect is to rubber-stamp government power. Reflexive deference to the government in constitutional cases has undermined the chief goal of originalism—the preservation of the architecture and original meaning of the Constitution—by a steady and inevitable aggrandizement of government power.

It is high time for judges to abandon reflexive deference. Judges should be unafraid to review government actions and defend constitutional principles. This would entail, among other things, beefing up the “rational basis” review of government actions and making it a serious examination of both the government’s ends—are they properly derived from the government’s legitimate purposes?—as well as the government’s means—do they rationally advance the ends that the government articulated at the time it undertook the action being challenged? By making these important shifts in the way constitutional cases and the facts underlying them are viewed, judges can best live up to their obligation to uphold the Constitution—a goal judges of all political stripes should be able to embrace. ♦





*Ambassador Henry Cabot Lodge, President Ngo Dinh Diem, Saigon, August 26, 1963*

# The Opening Act

*'Sink or swim with Ngo Dinh Diem.'* BY CHARLES TRUEHEART

Fifty years ago this coming All Saints' Day, the United States government concluded its patronage of Ngo Dinh Diem by dispatching him from the presidency of South Vietnam. His removal, in a U.S.-countenanced Vietnamese military coup, might have been less dramatic had President Diem not perished, with his brother and svengali Ngo Dinh Nhu, at the hands of junior Vietnamese officers entrusted with their safe exfiltration. But the coup's consequences remained the same: a succession of keystone-kops military governments that finally settled on

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**Misalliance**  
*Ngo Dinh Diem, the United States, and the Fate of South Vietnam*  
by Edward Miller  
Harvard, 432 pp., \$39.95

Nguyen van Thieu, who won elections and survived his own incompetence, and American impatience, even longer than Diem had.

The story of the coup against Diem was quickly obscured by the real and unmitigated pressures that had led to it—escalating U.S. alarm about the ability of South Vietnam to defeat the Communist insurgency—and the assassination of John F. Kennedy three weeks later. The 16,000 American

military personnel in South Vietnam at the time of the 1963 coup grew tenfold within two years and more than thirty-fold within five. The rest is a sad and better-known story. It was only a decade later that Congress, drawing lessons from the Diem affair—and the attempts, successful and otherwise, on the lives of Patrice Lumumba, Rafael Trujillo, Fidel Castro, and others—banned the practice. After 9/11, the assassination ban suddenly seemed quaint.

Meanwhile, a new generation of American scholars of the Vietnam war is reexamining the Diem years in an effort to resuscitate the reputation of this underestimated and putatively misunderstood anti-Communist Catholic mandarin. Their analysis implies, with varying degrees of subtlety, that

the United States might have turned the tide of the war if it had stuck with Diem.

Remembering that Diem is pronounced *Ziem*, there was a saying at the time that sums up well the subject of Edward Miller's new book: "Sink or swim with Ngo Dinh Diem." (It is attributed to Homer Bigart, the *New York Times* correspondent in Saigon who preceded David Halberstam.) This was effectively the policy of Dwight Eisenhower, and then Kennedy, as their respective administrations surveyed the tenacity of the Communist insurgency and anguished over President Diem's failures, their plans and remonstrations constantly buffeted and frustrated by the—there is no other word for it—inscrutable behavior of their client in Saigon. Hamid Karzai today is a direct descendant of Ngo Dinh Diem—as the infuriating, uncooperative client-president to whom there is no apparent alternative.

Diem was an anti-Communist, but he was no democrat. Behind his pseudo-intellectualism and his Western and mandarin breeding lay a gently authoritarian despot; behind the democratic republic was a police state. Diem was "a messiah without a message," in the words of an American diplomat in Saigon, as early as 1954. But he was *our* despot and messiah, "our chosen instrument," in the words of another American official. Lyndon Johnson, on his first foreign trip as vice president, went to Saigon in 1961 and, within two days, had compared Diem to George Washington, Andrew Jackson, Woodrow Wilson, Franklin Roosevelt, and Winston Churchill.

Ngo Dinh Diem was infamous for his logorrhea and the deafness that accompanies it. He would chain-smoke (his only vice) and lecture his interlocutors on Vietnamese history for four or six hours at a time. One reads of such behavior from many dictators, who are unaccustomed to being

interrupted, let alone contradicted—let alone entertaining the stiffening démarches and ultimatums the United States was delivering during the spring, summer, and fall of 1963.

Born in 1901 in Hue to a prosperous family, Diem was educated in the colonial French system, learned Latin and classical Chinese, and became a lifelong vegetarian, teetotaler, workaholic, ascetic, bachelor, and "personalist" philosopher. With the help of family connections, and his brother Nhu's darker skills, for a decade after World War II he outmaneuvered his

was a clash of opposing approaches to "nation building." His book skillfully places the establishment of the new nation in the great debate after World War II between the high modernist (Walt Rostow et al.) and low modernist (*The Ugly American*) development schools. Miller's command of the various parties and factions that jostled for power at the collapse of, first, Japanese occupation and then French rule is exhaustive, and his analysis of the economic development programs—land reform, the Agrovilles, the Strategic Hamlet program—is fascinating in its own right.

Miller is among those who believe that there was a chance, even up until the very last moment, that the coup could have been called off—that Diem might have been persuaded to dump his radioactive brother and set the country on a new course of economic development, political freedom, and counterinsurgency. Hindsight can be helpful, but not very much so here. Given the course of the war at that moment,

and Kennedy's anxieties about an impending reelection season, it is hard to see how Diem might have been (or should have been) saved. What brought him down in 1963 was tangential to American preoccupations. At the same time, it served as the most damning evidence yet of Diem's political ineptness—or, as some hoped to believe, the thrall he was under to his brother.

This cause was the Buddhist crisis. Some may remember from the headlines of 1963: a government crackdown on a Buddhist celebration in Hue in May; the self-immolation of a Buddhist *bonze*, Thich Quang Duc, on a Saigon street in June; an August raid on 12 Buddhist pagodas in Saigon, in which hundreds were detained. The deteriorating political situation in South Vietnam became an international story, fueled by robust and contrarian American



Protest by suicide in Saigon, October 1963

Vietnamese rivals and the French colonials while courting rising American politicians and gradually overcoming skepticism in Washington. For Miller, far from being a patsy or mere instrument, Diem was a sophisticated political operator *and* a deep thinker who was determined "to fashion a new vision of how Vietnam might become a modern nation . . . [in] an ambitious attempt to synthesize certain contemporary ideas and discourses about Catholic Christianity, Confucianism, and Vietnamese national identity."

Miller enjoys setting up prevailing historical views with which he begs to differ. He aims to understand the misalliance of his title in a fresh context, removed from Cold War geopolitical machinations, domestic American politics, and the human eccentricities and bureaucratic warfare that can make history so interesting. For Miller, who teaches at Dartmouth, the misalliance

news reporting. American officials in Washington and Saigon were alarmed but, until the end, were not in full accord about what to do.

My father, William C. Trueheart, deputy chief of mission at the Saigon embassy at the time, and chargé d'affaires in the periodic absence of U.S. ambassadors that summer and fall, was a supporting player in this drama. The historical record associates him with the camp of those in the embassy and administration with less, rather than more, patience and optimism about the prospects of salvaging the war effort with Diem as chief of state. In any case, there came a time when there was no turning back. The Vietnamese generals rounded up by Lucien Conein, one of the more colorful CIA men of his generation, had been given 50 shades of green light during the late summer and fall. The Ngos knew full well that plotting was afoot and that Washington was abetting it, but believed their lines of authority were stronger, or that American patience was deeper than it was, or both.

Miller establishes throughout this account that the Ngo brothers, having outfoxed or worn down American policymakers and their domestic opponents for so long, had lost touch with reality. The best evidence of this is that, in the last days of their regime, Diem and Nhu were sending negotiating feelers to the National Liberation Front—not, in Miller's view, because they were prepared to form a “neutralist” coalition government with their adversaries, as the United States feared (and as Charles de Gaulle dreamed), but because they sincerely believed their enemies were on the verge of collapse and would sue for peace!

It's reasonable enough to ask the “what-if” question, even if the premise of a transformed and Nhu-less Diem is difficult to imagine. That said, it is incontrovertible that the Kennedy administration and the Saigon embassy, in reassuring the coup plotters of American support for Diem's removal, were “throwing away a bird in the hand before we have adequately identified birds in bush, or songs they may sing,” in the lovely

phrase of William Colby, the CIA station chief in Saigon who went on to run the agency.

The first bird in question was the burly Duong Van “Big” Minh, whose potential leadership appealed to one U.S. policymaker because he was tall; Diem was short and stout. Minh lasted but three months, overthrown by other generals whose leader, Nguyen Khanh, lasted a year, before another coup or two installed Nguyen Cao Ky and, finally, Nguyen

van Thieu, with whom the United States would swim *and sink*. After one of these successor coups, President Johnson directed Defense Secretary Robert McNamara to tell the new general in place: “No more of this coup s—t!” Indeed.

Oddly, *Misalliance* concludes abruptly before any of this had occurred—on the second day of the coup—as the Ngo brothers, hands tied behind their backs, entered the armored personnel carrier where they would die. ♦



# Infamous Creoles

*Annals of the avant-garde in the Vieux Carré.*

BY BARTON SWAIM

**T**he great thing about this account of the artists and intellectuals in and around New Orleans's French Quarter during the 1920s is that it upends nearly every assumption commonly made about the American South—even the true ones. The early-20th-century South may have produced the odd isolated genius, but it did not generate anything of cultural distinction. True enough. And yet for a decade, New Orleans—by far the largest city in the South with 400,000 people—became a hothouse of young, or mostly young, playwrights, novelists, musicians, painters, archaeologists, poets, and journalists.

In 1926, two of them—an artist and a writer both in their 20s—compiled a lighthearted satirical collection of 42 sketches of their friends called *Sherwood Anderson and Other Famous Creoles*. William Spratling, the artist, drew the sketches, and his roommate, William Faulkner, wrote the introduction. Anderson, then at the height of his literary fame, had moved to New

**Dixie Bohemia**  
*A French Quarter Circle in the 1920s*  
by John Shelton Reed  
Louisiana State University, 320 pp., \$38

Orleans two years before, but he did not think much of the book (“I don't think it's very funny”), Faulkner having parodied the older man's overearnest style.

Many of these Famous Creoles, as John Shelton Reed calls them, were neither famous nor Creole. Most were Southerners, although a substantial minority came from elsewhere. A few either were already famous or would become famous later; but most were, as one of them put it, “internationally famous locally.” Reed introduces Spratling and Faulkner's self-published lark with a detailed and sprightly analysis of the loosely connected group itself, then annotates the sketches with 42 short biographies concentrating on the decade of the 1920s. Each biography is titled with the subject's name and his or her age in 1926, giving you a better idea of what the group looked like in its heyday—a nice touch that brings attention to its generational diversity: In

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1926, the youngest was 20, the oldest 76.

The Famous Creoles had nothing like the cultural influence of, say, the Fugitives in Nashville or the New York Intellectuals; the Creoles were more of a social circle than an intellectually coherent coterie. Nor did they produce many works of art or literature to which one could ascribe the word “great.” Faulkner wrote his best novels after leaving New Orleans; Anderson had written his best work long before arriving; and, despite the group including talented painters, none achieved lasting fame outside the region. One reason for this, in the opinion of Reed and others, is that living in New Orleans lent itself too easily to atmospheric “local color” that comes off as charming—interesting, maybe—but unmemorable. It was just too easy, evidently, to paint swamps and old brick slaves’ quarters and write about jazz trumpeters and Cajun voodoo priestesses.

Still, taken as a whole, the French Quarter of the 1920s was the center of a remarkable cultural effusion, one that either created or enriched several institutions, among them a now iconic revitalized amateur theater, Le Petit Théâtre du Vieux Carré, as well as the equally iconic Arts and Crafts Club; the Newcomb College School of Art at Tulane; the *Double Dealer*, a briefly famous literary magazine; and several fiercely competitive newspapers, including the *Times-Picayune* and the *Morning Tribune*.

Of all these, the *Double Dealer* is the least remembered, the most significant in literary history, and the most fun to read about. “A national magazine from the South,” as the cover rather too self-consciously claimed, it was founded in 1921 by two young littérateurs from prominent Jewish families. The magazine’s office—“a filthy place . . . with some overstuffed furniture, a set of dueling pistols, and two human skulls”—was a kind of lounge for the Quarter’s intellectuals, a bohemian version of John Murray’s London bookshop a century before.

The *Double Dealer* was heavily influenced by H. L. Mencken, and it

shows; its editorials took a delightfully perverse attitude to nearly everything, especially important people. F. Scott Fitzgerald, for instance, was “the flapper philosopher . . . a modern young man lately come up from Rutgers or some such institution.” Anderson, though not on the masthead, was a guiding presence; its contributors included Ezra Pound, Amy Lowell, Edmund Wilson, Thornton Wilder, Malcolm Cowley, Hart Crane, and even (Reed tells us) “unknowns like William Faulkner and ‘a young American living in Paris’ named Ernest M. Hemingway.”

**A**t the height of its brief life, the *Double Dealer* reached a circulation of 3,000. It ceased publication in May 1926, and is now forgotten even by Wikipedia. These days, such a thing would never be allowed to happen. A literary magazine like the *Double Dealer*, with claims to cultural significance and inevitably faced with financial doom, would seek the aid of a university. If granted, the magazine would then operate under the auspices of a department of comparative literature; it would be edited by older academics, written by younger ones, and read by almost no one.

The French Quarter of the 1920s, by contrast, existed before universities came to dominate cultural life in America. Some of the Famous Creoles were on the faculty at Tulane—Ellsworth Woodward was a professor at the Newcomb school for 40 years—but the university was not its center or its animating force. Most, or all, of the Famous Creoles’ institutions, Reed tells us, “were founded and paid for by moneyed, ‘uptown’ folk.” What gave vitality to this essentially bohemian movement was the mostly happy relationship existing between itself and wealthy society. Occasionally, we learn, society and Bohemia grew impatient with each other—as when the wealthy preservationist Elizabeth Werlein banned Faulkner from her house after he showed up barefoot—but by and large the relationship was an approving one.

Reed does not sidestep the fact that

the Famous Creoles were all white and that neither the Northerners nor the Southerners among them showed any visceral opposition to the marginalization of black men and women in Southern society. That unhappy fact aside, the sheer number and diversity of remarkable characters in *Dixie Bohemia* is staggering.

There is, taking an example almost at random, Natalie Scott. Scott was a gossip columnist and Faulkner and Spratling’s landlady. She served with the Red Cross in France during the First World War, explored Mexico on horseback in 1929, established a sanitation system and founded a nursery for the Mexican town of Taxco—and, after Pearl Harbor, served with the Red Cross again in North Africa, France, Italy, and Germany.

There is also Meigs Frost, aged 44 in 1926, who had already “covered six revolutions in Latin America, fought in the campaign against Pancho Villa, lost an eye to ‘a jungle fever,’ and took some shrapnel that put a silver plate in his leg for the rest of his life.”

There is Frans Blom, who wrote his Harvard master’s thesis on Mayan ruins, taught at Tulane, was fluent in five languages, and made at least one major discovery: “that a group of buildings at the Uaxactun site are aligned with seasonal changes in the position of the sunrise.”

And there is Oliver La Farge. In 1929, aged 28, he wrote the novel *Laughing Boy*, about the lives and culture of American Indians. It is the only novel from the period still worth reading (very much including, it has to be said, Faulkner’s *Mosquitoes*). La Farge’s book won a Pulitzer Prize in 1930. The list of dramatis personae goes on and on, and doesn’t even include the strange walk-ons—like Colonel Charles Glenn Collins, a “Scottish confidence man with a knack for marrying heiresses.”

John Shelton Reed, widely known as a scholar of the American South, makes much of the fact that he is a sociologist rather than a historian. Maybe. But he’s also a fine essayist and knows how to tell a story—and he’s at his considerable best here. ♦

# Morningstar in America

*An underrated novel gets some overdue attention.*

BY JONATHAN LEAF



Herman Wouk in Times Square, 1962

Here's a story of movie star vanity. In 1998, word appeared that Al Pacino had optioned the rights to Herman Wouk's novel *Marjorie Morningstar* (1955). Sporadically over the next few years, reports came out linking the actor with various actresses who wished to play the title role of a woman, barely out of her teens, who becomes involved with a charismatic and charming but amoral and unreliable songwriter in his mid-thirties. Pacino was 58 at the time.

Six years later, stories ran linking the project to Scarlett Johansson, who expressed her desire to play Marjorie, saying that the novel had special meaning for her. But the movie, which would have been a remake of a 1958 adaptation, was not shot. Might

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**Marjorie Morningstar**  
by Herman Wouk  
Back Bay, 584 pp., \$16.99

this have been because, at the time, Johansson was 19 and Pacino was 64?

Whatever the cause, it is probably best that the film was never produced. It's an axiom that great novels make bad movies; and, although *Marjorie Morningstar* has been written off by most critics as a cleverly composed specimen of "popular" writing, it is a great novel. Indeed, in my view, no other American work of fiction has so successfully told the story of a young woman's coming-of-age. So why is it not taken seriously among the cognoscenti? If critics of the 1960s and '70s could be persuaded that Norman Mailer and Gore Vidal were not only important artists but thinkers as well, how could they have dismissed one of

the best and most readable novels written by an American in the 20th century?

Not long ago, I went to Herman Wouk's house in Palm Springs to visit the author, now 98, and try to get some answers. I was met by a shrunken, not entirely ambulatory man with the thick white beard of a biblical patriarch. Smiling and gregarious, Wouk was sometimes open and sometimes evasive, but he was entirely lucid. And plainly apparent was his continuing hostility towards the "Partisan Review crowd" and the avant-garde.

Undoubtedly, this played a role in the general depreciation of his work. For in all of Wouk's work there is an expressed admiration, oftentimes an overt celebration, of the values and ideas that the left intelligentsia deplores. In *The Caine Mutiny* (1951), the object of veneration was the military, as it was in his two-volume, million-word take on World War II, *The Winds of War* (1971) and *War and Remembrance* (1978). In his final two large-scale novels, *The Hope* (1993) and *The Glory* (1994), Wouk went still further by lionizing the Israeli Army for its valor and steadfastness during Israel's war of independence and the three wars which followed.

Yet *Marjorie Morningstar*, arguably his best book, stands at an even greater remove from contemporary orthodoxy. For here, Wouk is questioning the idea that sexual initiation comes without a potentially large cost and that the pursuit of fame and career at the expense of family and home is worthy of the expense. This is not to say that *Marjorie Morningstar* is programmatic, or without ambiguity. But much of its power comes from its fidelity to the life of Wouk's older sister, Irene, as well as its wealth of detail about Manhattan's Upper West Side of the 1930s. The reader gets precise descriptions of Depression-era bar mitzvahs and weddings, the faded passenger seats in vintage automobiles, the unmade beds in ocean liner cabins.

Wouk always aimed to appeal to a wide audience—and to entertain—and when *Marjorie* fails in verisimilitude, it is most often through its dialogue, which is consistently witty and diverting, if not precisely faithful to

actual conversation. Wouk wanted not only to amuse but to build the story's pace and convey the characters' thoughts, even if this meant being "on the nose." This habit reflects his training as an author, first for Columbia University's annual varsity shows, and then as a top radio joke writer for, among others, Fred Allen.

Wouk's initial ambition was to write not fiction but plays, and *Marjorie Morningstar* started as a one-act drama entitled "Crisis Over Marjorie," the story of a pretty, articulate, would-be actress and a bohemian/man-about-town seducer of whom her parents disapprove. In rereading the script, Wouk was struck that its stage directions were more compelling than the dialogue.

Wouk was a naval officer during World War II, serving as executive officer of a minesweeper-destroyer, and it was military service that pulled him out of his circumscribed life as a New York Jew to a broader knowledge of America and its people. It also gave him time to read and write. It was during sea duty that he composed his first novel, *Aurora Dawn* (1947), a good-natured satire of the world of radio advertising, also based on an earlier draft of a play. Its modest success persuaded Wouk to concentrate on novels, and gave him confidence as well. Wouk told me that it occurred to him during his time in the Navy that the conflict deserved a work akin to *War and Peace*—but that couldn't possibly be accomplished by "a lowly gag writer."

Still, *Marjorie Morningstar* is a novel of professional, as well as emotional, skill. There is a pair of compelling central characters, and a plot which is at all times organic, never forced or contrived. It is further heightened by a technical feat: There are only two scenes from a point of view other than the heroine's; as in life, many of the surprises come not from the outcome of events but from the central character's abrupt recognition that she has misunderstood or misperceived her choices. Although clever and beautiful, Marjorie is young, unworldly, and naïve, and we can see that she has limited social skills and modest talent.

In the course of her young adult-

hood, she assimilates away from her traditional Jewish upbringing and, as one critic has noted, picks up a series of bad habits without acquiring any compensatory virtues. It is this last quality—virtue—which sits at the heart of the tale. For, although Marjorie falls in love with the hedonistic Noel, she won't sleep with him without a ring. If this sounds especially dated today, it struck a discordant note in 1955 as well. Wouk told me that it was the intervention of no less than his fellow novelist John P. Marquand, serving on the board of the Book of the Month Club, which led to its selection, and that both his agent

and his publisher regarded *Marjorie* as hopelessly uncommercial.

That *Marjorie Morningstar* went on to rank among the biggest sellers of the 1950s, and that so many women continue to rank it as their favorite novel, is testament to how vital it can be, reflecting the complex and ambivalent reactions of readers. The "happy" ending, set in the years long after the central events of the novel, suggests a certain unease, a lack of fulfillment in its heroine. *Marjorie Morningstar*, willfully reconstructing and reinterpreting her own life, finds that time has allowed her to forget her pain. But the reader cannot. ♦



## The Human Factor

*The family of man seems to confuse its latest therapist.*

BY MICAH MATTIX

Marilynne Robinson is afraid we are losing our "loyalty to democracy" in America, though her reasons for fearing this might (or might not) surprise you. Tribalism and austerity—a general lack of generosity—will kill America. Individuals are generous enough, she admits, but what is lacking is a generosity in our public discourse and public programs. This is the gist of her sometimes insightful, but too often frustratingly vague, collection of essays.

Robinson, a generally gifted novelist and essayist, is no kowtowing liberal. In her previous collections of essays, she has skewered the modern caricature of American Puritans as repressed and oppressive fundamentalist yokels, and she has often attempted to save John Calvin from uninformed and biased dismissal. She has joined many others in debunking that fanatical fundamentalism of the 20th and

**When I Was a Child I Read Books**  
*Essays*

by Marilynne Robinson  
Farrar, Straus and Giroux, 224 pp., \$24

21st centuries, philosophical materialism. And she has not-too-infrequently defended the Old Testament against charges of barbarism.

She does some of this here. In the first essay, Robinson takes on the "tedious, fruitless controversy" of science against religion. The idea, she writes, that the physical world, "as a distinct category," is somehow "antithetical to the spiritual" is wrongly accepted as fact by scientists and the religious alike. She chides Christians for accepting this Manichean duality, but focuses mostly on scientists who worship at the altar of the scientific method. While science is "a great contributor to what is beautiful and also terrible in human existence," Robinson writes, "there is no moment in which, no perspective from which, science as

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science can regard human life and say that there is a beautiful, terrible mystery in it all, a great pathos.”

In other essays, she defends Calvin’s Geneva against wrongheaded claims that it was an uncaring theocracy, and puts paid to the condescension and anti-Israel bias still too common in much modern biblical criticism. Yet most of the essays deal with America’s loss of community, charity, and greatness, and it is in these essays that Robinson’s penchant for the ignored fact and the counterintuitive argument (as well as her professed spirit of generosity) fails her.

First, there is “Imagination and Community,” an essay on the importance of education in developing the empathetic capacities of our students and the role of empathy in building a civil society. “I am persuaded,” she writes, “that community, at least community larger than the immediate family, consists very largely of imaginative love for people we do not know or whom we know very slightly.” She goes on to claim indirectly that the humanities are central in developing this capacity for empathy. This is neither a new nor uncommon statement for literary folks to make; I myself have presented this argument to my students—though I always point out that Seneca rejected the idea that studying the liberal arts necessarily leads to virtue. (At best, he said, “they prepare the soul for the reception of virtue.”) He has a point. Are readers and artists, poets and philosophers, generally more empathetic, more virtuous, than uneducated migrant workers?)

Dismissing the catastrophic decline in students’ reading and writing skills over the past 20 years by complaining that all this talk about the “dumbing-down” of America is un-Christian, Robinson quips that the pressure put on educators to train efficient workers makes it sound like we actually “lost the Cold War.”

“I think,” she continues in a more serious tone, “we ought to reconsider the pressure, amounting sometimes to hostility, that has lately been brought to bear on our educational culture at every level, particularly in the humanities and the arts.” It must certainly be

a law of modern discourse by now that whenever someone laments the lack of understanding exhibited by others, it is immediately followed by a statement that is at least a little pig-headed.

Then there are the essays on austerity and charity. In “Austerity as Ideology,” Robinson argues that conservatives have used the financial crisis—a crisis she blames on evil corporations alone—to unnecessarily cut school funding, break unions, further



Marilynne Robinson

impoverish the already impoverished, derail Obamacare, and overturn “laws that protect air and water quality.” Why? Because, it seems, they are hard-nosed ideologues who have followed a single idea to its deluding conclusions: “Like paranoia,” she writes, referring to ideology in the context of a critique of conservative policy proposals, “it all makes perfect sense, once its assumptions are granted. Again, like paranoia, it gathers evidence opportunistically, and is utterly persuaded by it, fueling its own confidence, sometimes to the point of messianic certainty.” It seems strange to chalk up concern regarding our burgeoning national debt as delusional while we watch Greece, Italy, Cyprus, Portugal, and Spain enter what will be a generation-long economic crisis. But this is exactly what Robinson does.

In her essay on Calvin and American Puritans, she argues that Christians

have a moral obligation to care for the poor and that charity was a central virtue for colonial Americans. Calvin often spoke and wrote of the Christian imperative to be liberal in generosity, and Robinson rightly notes that charity was an ideal of early American Puritans. We see this most famously in John Winthrop’s “A Modell of Christian Charity,” but also in the 1641 *Massachusetts Body of Liberties*, which is distinguished from many penal codes of the time in not requiring the death penalty for theft. This is true, and it is a timely reminder in these difficult times.

What’s patently false, however—and which Robinson goes on to suggest—is that to stand against government programs for the poor is to stand against the poor themselves. Both Calvin and Edwards always spoke of the individual’s responsibility to take care of the poor: “[A]s every man knoweth the particular needs of his neighbors,” Calvin wrote, “so let him indeavour to succor them.” Robinson quotes this very passage but ignores—opportunistically?—the underlying assumption in Calvin’s appeal. Nor does she note that Winthrop’s argument that Christians must exercise great liberality in giving, which is a form of worship, has no clear applicability in the context of a modern welfare system.

Robinson claims to “have probably had a broader experience of the American population than is usual.” I can only take her at her word, but either she has never met serious conservatives who espouse limited government precisely because they view it as a means of protecting liberty and nourishing human flourishing—or she chooses to ignore such ideas. Either way, the book suffers because of this, making it seem behind its time. Robinson notes rightly that “there is no inevitable conflict between individualism as an ideal and a very positive interest in the good of society.” Governments and laws are absolutely necessary. But if the past hundred years have taught us anything, it is that vague notions of the “positive interest in the good of society” have also been the linchpins of some of the worst acts

of atrocity, and governments tend to use such vague notions to increase the unnecessary governmental curtailing of individual freedom just as surely as hedge fund managers cheat when incentivized to do so.

Politics has a way of humanizing great writers by revealing blind spots or flaws in their thinking that are not otherwise apparent. William Wordsworth was embarrassed by his early, somewhat naïve, support of the French Revolution, and John Ruskin gained

a nice reputation as a crank because of his consuming interest in political economy in his later years, which sometimes overshadowed his artistic and critical accomplishments. More seriously, Ezra Pound's reputation was sullied following his support of Mussolini. Nothing so grievous or wrongheaded is expressed in Robinson's essays, but they nevertheless serve as examples of how difficult it is for novelists and poets to address political issues without losing something of their heightened status. ♦

pharaonic power, left us the enormous (though now mostly ruined) temple complex at Karnak. Rome's powerful imperial state, with the dressings of a republic, left us the Forum. Medieval Europeans built soaring cathedrals and surrounding complexes (which sometimes grew to become cities, in places like Chartres and York) that reflected great technical skill. All of them involved radical alterations of the environment to create synthetic worlds removed, almost as if by magic, from daily experience.

The temple at Karnak had room upon room built on stone and great soaring pillars at a time when most people lived in mud huts. It embodied the absolute power of the pharaoh and a reverence for the gods. The medieval cathedrals, the largest buildings constructed in the West since the fall of Rome in the fifth century, were far more than simple palaces to the divine: They were entire environments surrounded by towns and gardens that offered escape and respite from the humdrum and poverty of medieval daily life while simultaneously serving as a sign of the wealth, power, and social dominance of the church.

The list could go on—the Palace of Versailles embodies the *l'état, c'est moi* attitude far better than any written document ever could—and that's a large part of the reason why, hundreds or even thousands of years after these places were built, they are still places that people visit and study in enormous numbers.

And Disney World is such a place.

A brief detour into the complex's history makes it clear that it was always intended to be a full-scale place, not just a playground. That said, Walter Elias Disney, a terrifically talented animator and organizer with distinct manic-depressive tendencies, can't really take more than a smidgen of credit for the specifics of today's Disney World. The land upon which the resort sits was purchased at Disney's behest to realize his vision for something called the Experimental Prototype Community of Tomorrow (EPCOT), a true "city of the future" where people would live and

## Disney's America

*To understand ourselves, this is one place to start.*

BY ELI LEHRER

The Walt Disney World Resort, located outside of Orlando, has more than twice Manhattan's land area and about the same number of hotel rooms as Philadelphia. It's America's largest single-site employer—over 60,000 people work there—and for many of the 17 million or so who visit each year, it is a place of near-religious significance. (At least one book and more than a dozen peer-reviewed academic articles have considered various aspects of Disney's status as a secular pilgrimage site.)

Nobody can possibly dispute that Walt Disney World is popular and economically successful. To more than a few elites of the left and right, however, Disney World reeks of inauthenticity, garishness, and just about everything that's wrong with America. Florida journalist/novelist Carl Hiaasen speaks for many when he accuses Disney of creating massive amounts of "roadside schlock," and derides the taste and sophistication of nearly every aspect of the corporate entity that "touches virtually every human being in America for a profit." And, of course, there's

no way to disprove or refute criticisms like this. People who don't like crowds, who turn their noses up at popular culture, or who believe that the only worthwhile cultural experiences involve opera and molecular gastronomy will never much like Disney World. (Although experiences with both *are* available to those who seek them in the self-styled "Most Magical Place on Earth.")

Plenty of others can and will go to Disney World and return disappointed. But none of this means that anybody seeking to understand and appreciate American culture as a whole—its aspirations, its excellences, and its defects—can ignore Disney World. As its existence approaches the half-century mark—the 42nd anniversary of its opening is in October—Disney World has become a vital piece of American culture that's well worth seeing for its own sake. Disney World, quite simply, isn't just a place to visit, but, for better and for worse, it is the greatest monument that American culture has built to itself.

Almost every great civilization, by design or accident, builds such a monument at some point. The Egyptians, obsessed with the afterlife and

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work using technologies decades from widespread public use. This vision, whatever its worth, proved far too costly for anybody to execute. Indeed, the greatest reminder of it today is a massive model of the prototype community built at Disney's behest in the Tomorrowland section of Magic Kingdom Park, which is devoted mostly to *past* visions of the future, along the lines of Jules Verne.

themed resorts with rates ranging from \$80 or so for a motel-type room (probably with a giant statue of a Disney character or a Brobdingnagian guitar outside) to over \$700 for a “concierge”-level room in the top-of-the-line Grand Floridian. Some of this is self-consciously whimsical. For example, the luxurious Polynesian resort has almost nothing to do with the actual South Seas, but is, rather, a sort of giant 1960s

And yet, while set apart from daily life, Disney World is as diverse and democratic as America itself. There's no real central theme that might be considered the apotheosis of the park. And while it certainly isn't accessible to the truly poor—a lot of other things aren't, either—a vast portion of America's population can fully partake in everything Disney World offers. Unlike almost all other theme parks, Disney

levels people in a peculiar way: Special needs children (my son among them) and the disabled can skip the sometimes-interminable lines whenever they want, but everyone else must either wait or take advantage of Disney's Fast Pass system.

Even Disney's governing structure embodies America. While Disney World is a private venture owned by the Disney Company's stockholders, its size and success owe something to a peculiar deal with the state of Florida that gives the company vast powers over infrastructure and zoning through an entity called the Reedy Creek Improvement District. Reedy

Creek, Disney's own government, follows open government laws and even holds elections. Only landowners, all of them affiliated with the company, can vote—but it shows that, even as a largely private venture, Disney World is not wholly independent of the state, and, like much of what Americans create, it can't be considered either wholly public or wholly private.

For all of its pageantry, Disney World still casts a powerful emotional spell. Some of it is easy to see: The decommissioning of beloved rides has inspired protests more than once. Other things are much subtler: On dozens of visits to the park, I've never once heard a voice raised in genuine anger or seen someone deliberately littering. Disney World, quite simply, inspires good behavior. And it's—really, honestly—a place of beauty. Sure, it's stagey; but what great monument is not? It's a real embodiment of American culture. And Disney World has become, perhaps in spite of itself, a real place.



*Entering the Kingdom of Walt by car*

What comprises the rest of Disney World is a huge, sometimes haphazard, assemblage of experiences catering to almost every taste and attitude found in modern America. The Disney Company did eventually build something called EPCOT: It's a theme park that re-creates much of the 1964 New York World's Fair, with exhibits about science and pavilions of various nations. It has also built a new-urbanist town called Celebration on land ceded from the park.

But there's a lot more that has nothing to do with anything Walt Disney dreamed up for EPCOT. Disney World, of course, has all of the typical resort amenities—five golf courses, two large spas, lots of boating opportunities, and riding stables. But only a small fraction of visitors take advantage of these amenities. Instead, visitors come mostly for the four theme parks—one of which, Animal Kingdom, is an accredited zoo with animals from all over the world—and the 24 lavish

tiki bar. On the other hand, the Wilderness Lodge does accurately evoke the Works Progress Administration-built National Parks lodges of the 1930s. (Disney employees, by the way, are a lot friendlier than park rangers.)

All of the academic literature positioning Disney World as a pilgrimage site makes clear how hard the company and its corps of “imagineers” (the Walt-coined neologism for the people who design the parks) have worked to make Disney a place set apart from the real world. Indeed, the Disney Company has made a hugely elaborate effort to do just this: Visitors following the official direction signs from the Orlando airport to the resort's hub at the Transportation and Ticket Center outside Magic Kingdom Park will see only a handful of businesses and private houses during the 23-mile journey. The company, thanks to its enormous economic power, has bent a large part of Florida's built environment to its will.

DENIS ADRIANA MACIAS

# Ultra Life

*From Israel, a transcendent vision of marriage.*

BY JOHN PODHORETZ

The “state of grace” is not, to put it mildly, a Jewish idea; in fact, save for Christ’s divinity, it may be the least Jewish concept in all of Christianity. So it is a fascinating irony that the first movie written and directed by an ultra-Orthodox Jewish filmmaker seems to embody the state of grace—albeit in an aesthetic way. I don’t know when I’ve ever seen a film as eerily perfect in tone and taste as *Fill the Void*.

This Israeli movie, the best film ever made in that country, tells a modest story. But the mere act of telling that story on film was an astonishingly ambitious thing to do, given the strictures imposed on writer-director Rama Burshtein by her own religious beliefs. Burshtein is an American-born 46-year-old who was raised a secular Jew in Israel, attended film school in Jerusalem, and became a member of what is known as the Haredi community at the age of 27.

What she has done here is to make a film about Haredi life in which that life is not the subject but the setting. (The word “haredi” means “those who tremble before God.”) In keeping with Haredi practice, men and women cannot touch onscreen. Women must be modestly clothed at all times, and married characters must have their heads covered. Men pray; women run the household.

This is not a movie in which a character has an existential crisis about the suffocating nature of traditional practice, and blessings upon Burshtein’s head for that. She neither romanticizes



nor condemns Haredi ways. She treats them as though they are the stuff of everyday life, which they are for her characters. Those characters are kind and selfish, thoughtful and thoughtless, beset by personal disappointments and elevated by small triumphs. They are anybody.

As *Fill the Void* begins, 18-year-old Shira (the extraordinary Hadas Yaron) and her mother Rivka (the equally extraordinary Irit Sheleg) are scouting out her potential bridegroom in a Tel Aviv supermarket. He passes muster, and Shira tells her very pregnant and astonishingly beautiful sister Esther that she is wild with excitement.

Then a terrible tragedy strikes. Esther dies in childbirth, leaving a bereft widower named Yochay and a needy newborn named Mordechai. Dazed with grief, the mother and sister take care of Mordechai until word comes that his father has been proffered an arranged marriage to a widow with two children in Belgium. The thought of losing Mordechai is

more than his grandmother can bear, and she conceives of a plan: Shira should marry her late sister’s husband to keep him and the baby close.

Given the Haredi connection to Jewish tradition, this is not an outrageous idea. There is an ancient practice called “levirate marriage” in which the brother of a dead man is obliged to marry his childless widow—a humane practice in ancient times, because it kept her under the protection of her late husband’s extended family rather than casting her out on her own. (Oddly enough, the first genuinely good Israeli film,

1972’s *I Love You Rosa*, concerned the proposed levirate marriage between a woman in her 20s and her brother-in-law, all of 12.)

Yochay is appalled by the notion at first, but warms to it; not surprising, as Shira is in full bloom. Shira resists, apparently because she believes she had already been matched with the boy in the supermarket. It turns out her reasons are far more complicated, ambiguous, and fascinating.

Marriage is the center of all things in *Fill the Void*, and it is mysterious and enveloping and frightening and ecstatic. Without ever making the point explicit, Burshtein clearly communicates that marriage is not only a domestic arrangement but the condition in which eroticism finds its deepest (and, in her world, its only) expression. Her sense of its potency brought to my mind Philip Larkin’s masterpiece, “The Whitsun Weddings,” about a train filled with newlyweds: *[W]hat it held, Larkin wrote of the train, Stood ready to be loosed with all the power / That being changed can give.*

*Fill the Void* is also about the power that being changed can give—a change wrought by a tragic death that leads to a new life. There isn’t a moment when Burshtein goes wrong, goes melodramatic, goes didactic, goes false. Working as a woman of faith in a medium looked on with understandable suspicion and skepticism by those who believe as she does, Rama Burshtein has made a work of art of overwhelming beauty and impact. ♦

John Podhoretz, editor of Commentary, is THE WEEKLY STANDARD’s movie critic.

**"Scarlett Johansson has been named as the frontrunner to play Hillary Clinton in the upcoming film Rodham, a biopic about the younger years of the former U.S. first lady and secretary of state."**  
—Vogue, May 28, 2013

**PARODY**

FADE IN:

INT. LIBRARY OF CONGRESS — 1974 — NIGHT

A mouse emerges from a small crack in the library's wall, and a LONG TRACKING SHOT follows the mouse as it scurries through the dimly lit stacks, the pitter-patter of its tiny feet the only noise heard as it weaves through row after row of towering shelves, past empty tables and a sleeping security guard, and finally to a small crumb of food on the floor next to a woman's high-heeled foot, which taps impatiently. The mouse eats the crumb and scurries off, but we stay on the woman's foot and SLOWLY TRACK UP, revealing her shapely, skirted legs, her full bosom, a wisp of beautiful strawberry-blond hair falling from a ponytail onto her exposed, milky-white shoulder. Over her shoulder we see she is reading THE ORIGINAL COPY OF THE U.S. CONSTITUTION. PAN AROUND to reveal: Pouty red lips, sultry and mysterious green eyes, she could be no one else: a young HILLARY RODHAM. She reads intently, mouthing the words that will change history, and the course of her life, forever: "High crimes and misdemeanors." She circles the words with a pen, and runs out to the exit, Constitution in hand.

CUT TO:

INT. HOUSE JUDICIARY COMMITTEE OFFICE — MOMENTS LATER

Hillary busts through the door, waving the Constitution. The members of the House Judiciary Committee, tense and exhausted, spin around.

HILLARY

I've got it! I know how we can  
impeach Richard Nixon!

The members of the committee shoot each other incredulous looks, but Hillary stands there out of breath, smiling, sure of herself. PUSH IN on her heaving bosom and:

MATCH DISSOLVE TO:

INT. A ROOM — DAY

CLOSE UP on a WOMAN'S bosom, heaving under a tight maroon T-shirt. Her voice is muted, droning in the background, but coming more clearly into focus.

WOMAN

Sir? Sir?

Cross-cut to reveal: A young WILLIAM JEFFERSON CLINTON, standing at the front of the line in a McDonald's, distracted.